

VOLUME 5

PAGES 843 - 1037

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

CIARA NEWTON,)
)
 PLAINTIFF,) NO. C-17-3961 YGR
)
VS.) FRIDAY, DECEMBER 14, 2018
)
EQUILON ENTERPRISES LLC DBA) OAKLAND, CALIFORNIA
SHELL OIL PRODUCTS,)
)
) JURY TRIAL
DEFENDANT.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: MINNIS & SMALLETS LLP
 369 PINE STREET, SUITE 500
 SAN FRANCISCO, CALIFORNIA 94104
BY: SONYA L. SMALLETS, ESQUIRE
 EVEN R. ETHINGHOFF, ESQUIRE

 DICKSON GEESMAN LLP
 1999 HARRISON STREET, SUITE 1945
 OAKLAND, CALIFORNIA 94612
BY: EMILY A. NUGENT, ESQUIRE

FOR DEFENDANT: LAFAYETTE & KUMAGAI LLP
 1300 CLAY STREET, SUITE 810
 OAKLAND, CALIFORNIA 94612
BY: GARY T. LAFAYETTE, ESQUIRE
 BARBARA L. LYONS, ESQUIRE

REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
 OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

DIANE E. SKILLMAN, OFFICIAL COURT REPORTER, USDC

I N D E X

	<u>PLAINTIFF'S WITNESSES:</u>	<u>PAGE</u>	<u>VOL.</u>
1	NAVARRO, JOSE		
4	DIRECT EXAMINATION BY MR. ETTINGHOFF	854	5
5	CROSS-EXAMINATION BY MR. LAFAYETTE	858	5
6	METCALF, RICHARD		
7	DIRECT EXAMINATION BY MS. NUGENT	861	5
8	CROSS-EXAMINATION BY MR. LAFAYETTE	890	5
9	REDIRECT EXAMINATION BY MS. NUGENT	911	5
10	<u>DEFENDANT'S WITNESSES:</u>	<u>PAGE</u>	<u>VOL.</u>
11	NEWMAN, PATRIK		
12	DIRECT EXAMINATION BY MR. LAFAYETTE	919	5
13	CROSS-EXAMINATION BY MS. NUGENT	930	5
14	MARTINELLI, LORI		
15	DIRECT EXAMINATION BY MR. LAFAYETTE	931	5
16	CROSS-EXAMINATION BY MS. NUGENT	943	5
17	REDIRECT EXAMINATION BY MR. LAFAYETTE	947	5
18	EXAMINATION BY THE COURT	948	5
19	FISCHER, JEFFREY		
20	DIRECT EXAMINATION BY MR. LAFAYETTE	949	5
21	LAYNE, CHRISTINE		
22	DIRECT EXAMINATION BY MR. LAFAYETTE	964	5
23			
24			
25			

	<u>DEFENDANT'S WITNESSES:</u>		<u>PAGE</u>	<u>VOL.</u>	
1	PEREZ, ERIC				
2	DIRECT EXAMINATION BY MR. LAFAYETTE		972	5	
3	CROSS-EXAMINATION BY MS. SMALLETS		1008	5	
4	REDIRECT EXAMINATION BY MR. LAFAYETTE		1021	5	
5	CURRAN, CAMERON				
6	DIRECT EXAMINATION BY MR. LAFAYETTE		1024	5	
7	<u>PLAINTIFF'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>ED.</u>	<u>VOL.</u>
8	26		1021	5	
9	65		884	5	
10	68		1009	5	
11	89A		1034	5	
12	103		934	5	
13	106		938	5	
14	135		927	5	
15	<u>DEFENDANT'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>ED.</u>	<u>VOL.</u>
16	503		951	5	
17	504		951	5	
18	505		952	5	
19	506		952	5	
20	507		953	5	
21	510		954	5	
22	513		954	5	
23	514		956	5	
24	520		957	5	

	<u>DEFENDANT'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>ED.</u>	<u>VOL.</u>
1					
2	526			958	5
3	529			960	5
4	544			973	5
5	545			974	5
6	546			975	5
7	551			977	5
8	556			978	5
9	557			979	5
10	559			979	5
11	560			980	5
12	567			959/981	5
13	569			982	5
14	570			982	5
15	574			984	5
16	585			995	5
17	586			995	5
18	587			996	5
19	588			996	5
20	589			997	5
21	590			997	5
22	591			998	5
23	593			896	5
24	596A			1034	5
25	600			898	5

	<u>DEFENDANT'S EXHIBITS:</u>	<u>WITHDRAWN</u>	<u>ID.</u>	<u>ED.</u>	<u>VOL.</u>
1					
2	601			901	5
3	625			937	5
4	626			940	5
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 FRIDAY, DECEMBER 14, 2018

8:00 A.M.

2 P R O C E E D I N G S

3 **THE CLERK:** REMAIN SEATED. COURT IS IN SESSION.

4 COME TO ORDER.

5 **THE CLERK:** CALLING CIVIL ACTION 17-3961 NEWTON
6 VERSUS EQUILON.

7 COUNSEL, PLEASE STATE YOUR APPEARANCES.

8 **MS. SMALLETS:** SONYA SMALLETS FOR PLAINTIFF CIARA
9 NEWTON. AND WITH ME IS EMILY NUGENT AND THE PLAINTIFF.

10 **THE COURT:** GOOD MORNING.

11 **MR. LAFAYETTE:** GOOD MORNING, YOUR HONOR. GARY
12 LAFAYETTE. AND WITH ME IS BARBARA LYONS AND THE CLIENT
13 REPRESENTATIVE MS. LAYNE.

14 **THE COURT:** ALL RIGHT. GOOD MORNING.

15 **MS. SMALLETS:** MR. ETTINGHOFF IS NOT IN THE COURT AT
16 THE MOMENT BUT WILL BE PRESENT LATER TODAY.

17 **THE COURT:** ANY ISSUES THIS MORNING?

18 **MS. SMALLETS:** YES, YOUR HONOR. WE WANTED TO TALK
19 ABOUT THE ANTICIPATED TESTIMONY OF DEANNA MARTINEZ.

20 **THE COURT:** OKAY. AND WHAT ELSE?

21 **MS. SMALLETS:** THAT'S IT FOR US.

22 **THE COURT:** MR. LAFAYETTE?

23 **MR. LAFAYETTE:** I HAVE THREE ITEMS -- FOUR ITEMS,
24 YOUR HONOR.

25 THE FIRST HAS TO DO WITH MR. JONES. HE'S ON THE -- IN THE

1 JURY INSTRUCTIONS, SOMETHING I DIDN'T CATCH LAST NIGHT.

2 AS AN EXPERT --

3 **THE COURT:** JUST GIVE ME THE LIST.

4 **MR. LAFAYETTE:** FIRST HAS TO DO WITH MR. JONES.

5 THERE IS A PHOTOGRAPH THAT MR. METCALF PROVIDED TO US EARLIER
6 THIS WEEK THAT I HAD NEVER SEEN BEFORE, AND WE WILL BE
7 EXAMINING HIM ON THAT.

8 **MS. SMALLETS:** YOUR HONOR --

9 **THE COURT:** HOLD ON. LET'S GET THE LIST.

10 **MS. SMALLETS:** SORRY.

11 **MR. LAFAYETTE:** THERE'S EXHIBIT 70 WHICH WE DISCUSSED
12 YESTERDAY WHICH I WILL BE EXAMINING A WITNESS ON.

13 AND I THINK I GOT A STIPULATION FROM PLAINTIFF TO THE
14 ADMISSIBILITY OF THE GATE LOGS SO THAT WE DON'T HAVE TO CALL
15 KULDEEP TODAY.

16 **THE COURT:** LET'S START WITH MARTINEZ.

17 **MS. SMALLETS:** YOUR HONOR, TO THE EXTENT TO WHICH
18 DEFENDANT IS ANTICIPATING CALLING DEANNA MARTINEZ TO DISCUSS
19 PROMOTIONAL OPPORTUNITIES AT THE REFINERY --

20 **THE COURT:** WHO IS DIANA (SIC) MARTINEZ?

21 **MS. SMALLETS:** SHE WAS AN OPCEN -- SHE WAS AN
22 OPERATOR IN OPCEN -- IN THE OPCEN UNIT DURING THE TIME PERIOD
23 THAT MS. NEWTON WORKED THERE.

24 **THE COURT:** WAS SHE ON PROBATION?

25 **MS. SMALLETS:** NO.

1 **THE COURT:** SO SHE WAS A FULL-TIME EMPLOYEE?

2 **MR. LAFAYETTE:** YES.

3 **THE COURT:** ALL RIGHT. AND WHAT'S THE ISSUE? LET ME
4 ASK THIS: WHY ARE YOU CALLING HER? WHAT DOES SHE HAVE TO DO
5 WITH THIS CASE?

6 **MR. LAFAYETTE:** SHE IS GOING TO TESTIFY WITH REGARD
7 TO A COMMENT MADE BY THE PLAINTIFF IN HER CASE-IN-CHIEF.
8 THAT'S WHY SHE'S COMING HERE. AND SHE IS NOT COMING TO
9 TESTIFY ABOUT PROMOTIONAL OPPORTUNITIES FOR WOMEN.

10 **MS. SMALLETS:** THAT'S FINE, YOUR HONOR. WE WERE
11 RELYING ON THEIR WITNESS LIST.

12 **THE COURT:** OKAY. ALL RIGHT. SO THAT ISSUE IS TAKEN
13 CARE OF.

14 OKAY. JONES.

15 **MR. LAFAYETTE:** IN THE JURY INSTRUCTIONS, HE'S
16 REFERENCED AS AN EXPERT WITNESS AND I DON'T THINK HE WAS AN
17 EXPERT WITNESS.

18 **THE COURT:** WAS HE REFERENCED? I DON'T REMEMBER
19 REFERENCING HIM AS AN EXPERT WITNESS.

20 **MR. LAFAYETTE:** IN THE PASSAGE THAT DESCRIBES
21 MS. OSTROFE, IT SAYS THERE ARE TWO EXPERT WITNESSES, AND RAY
22 JONES IS MENTIONED IN THERE.

23 **THE COURT:** ALL RIGHT. LIKE I SAID, I HAVE NOT GONE
24 BACK TO REREAD THESE WITH A FINE TOOTH COMB. I ALLOWED HIS
25 OPINION AS LAY OPINION. HE WAS NEVER QUALIFIED.

1 **MS. SMALLETS:** NO OBJECTION.

2 **THE COURT:** ALL RIGHT. WE WILL TAKE THAT OUT.

3 **MR. LAFAYETTE:** THE METCALF PHOTO, WHICH I WILL SHOW
4 TO PLAINTIFF COUNSEL BEFORE IT'S USED IS JUST A PHOTO WHERE A
5 GROUP OF PEOPLE WENT TO THE BALLPARK TOGETHER.

6 **THE COURT:** OKAY.

7 **MS. SMALLETS:** YOUR HONOR, IT WAS NOT PRODUCED TO US
8 IN DISCOVERY.

9 **THE COURT:** COME ON GUYS, REALLY? WHAT'S THE DEAL?

10 **MR. LAFAYETTE:** IT'S A PERSONAL PHOTOGRAPH. IT WAS
11 NOT A COMPANY DOCUMENT. HE SHOWED IT TO ME OFF HIS PHONE.
12 THAT'S ALL I HAVE.

13 **THE COURT:** WHAT'S THE POINT? FIRST OF ALL, YOU'VE
14 NOW PRINTED IT?

15 **MR. LAFAYETTE:** DO WE HAVE A PRINT COPY?

16 **THE COURT:** YOU THINK YOU ARE GOING TO JUST SHOW IT
17 ON THE PHONE?

18 **MR. LAFAYETTE:** NO, WE HAVE PRINTED IT. KELVIN IS
19 NOT HERE.

20 **THE COURT:** LET ME SEE THE DARN PHOTO.

21 **MR. LAFAYETTE:** AS SOON AS MR. SU SHOWS UP, I WILL
22 HAVE IT WITH ME. I DON'T HAVE IT WITH ME.

23 **THE COURT:** WHAT IS THE POINT OF THE PHOTO?

24 **MR. LAFAYETTE:** IT'S A PHOTOGRAPH THAT WAS TAKEN
25 AFTER THE INCIDENT WITH THE STICKER. SHE'S IN THE PHOTOGRAPH

1 ALONG WITH THE REST OF HER CREW.

2 **THE COURT:** OKAY.

3 **MR. LAFAYETTE:** AND IT JUST DEPICTS A CERTAIN LEVEL
4 OF HAPPINESS THAT UNDERLIES WHAT SHE TESTIFIED TO.

5 **THE COURT:** OKAY. YOU CAN PUT HER BACK ON THE STAND
6 TO SAY SHE WASN'T HAPPY IF SHE WASN'T HAPPY. I MEAN, COME ON
7 FOLKS. YOU COULD OBJECT. OBJECT, NOTED FOR THE RECORD, WE
8 ARE MOVING ON.

9 **MS. SMALLETS:** OKAY.

10 **THE COURT:** DO YOU OBJECT? DO YOU WANT TO PUT IT ON
11 THE RECORD?

12 **MS. SMALLETS:** YES, WE OBJECT ON THE BASIS THAT THIS
13 SHOULD HAVE BEEN PRODUCED TO US AND WE SHOULD HAVE HAD NOTICE
14 OF IT.

15 **THE COURT:** I DON'T SEE ANY PREJUDICE. NOW YOU KNOW.
16 THINK OF WHAT YOU WANT TO SAY ON CROSS.

17 **MR. LAFAYETTE:** EXHIBIT 70, YOUR HONOR, WAS THE
18 DOCUMENT -- PLAINTIFF'S EXHIBIT 70. IT IS AN EXHIBIT THAT I
19 ATTEMPTED TO EXAMINE THE PLAINTIFF ON YESTERDAY.

20 I'M GOING TO CALL A WITNESS TODAY TO TESTIFY ABOUT HOW
21 EXHIBIT 70 WAS CREATED. I AM NOT GOING TO TRY AND DO ANYTHING
22 TO SHOW ANYTHING ABOUT AN INVESTIGATION INVOLVING -- THAT THE
23 UNION PARTICIPATED IN. IT'S ONLY WITH REGARD TO THE
24 PREPARATION OF THE DOCUMENT.

25 **THE COURT:** OKAY. SO THIS IS THE -- 70 IS THE SET OF

1 DOCUMENTS THAT WERE IN HER FILE.

2 **MR. LAFAYETTE:** THAT'S CORRECT.

3 **THE COURT:** THAT WERE THEN SENT TO HER --

4 **MR. LAFAYETTE:** YES.

5 **THE COURT:** -- SOMETIME AFTER SEPTEMBER 28TH, 2016.

6 **MR. LAFAYETTE:** THAT'S, CORRECT YOUR HONOR.

7 **THE COURT:** ALL RIGHT. THAT'S FINE.

8 **MS. SMALLETS:** NO OBJECTION.

9 **MR. LAFAYETTE:** THAT'S ALL I HAVE.

10 **THE COURT:** ALL RIGHT. WE'LL GET STARTED THEN ONCE
11 THE -- AS SOON AS YOU GET THAT PHOTO, MAKE SURE YOU GIVE IT TO
12 THEM.

13 WE WILL GET STARTED AS SOON AS THE JURY IS HERE.

14 (RECESS TAKEN AT 8:14 A.M.; RESUMED AT 8:27 A.M.)

15 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

16 **THE COURT:** GOOD MORNING, EVERYONE. YOU MAY ALL BE
17 SEATED. THE RECORD WILL REFLECT WE ARE BACK ON THE RECORD AND
18 THE JURY IS WITH US. EVERYBODY DOING ALL RIGHT? IT'S FRIDAY.
19 WE'RE ALL HAPPY ABOUT THAT.

20 MR. SILVIA, ARE YOU DOING OKAY BACK THERE?

21 **JUROR:** (NODS.)

22 **THE COURT:** ALL RIGHT. GOOD ENOUGH.

23 ANY QUESTIONS BEFORE WE GET STARTED? NO?

24 MR. THELIN, YOU LOOK LIKE MAYBE?

25 NO?

1 **JUROR:** NO.

2 **THE COURT:** ALL RIGHT. NEXT WITNESS.

3 **MS. SMALLETS:** THE PLAINTIFF WILL BE CALLING JOSE
4 NAVARRO. HE'S IN THE COURTROOM, BRINGING HIM IN.

5 **THE COURT:** OKAY.

6 SO I UNDERSTAND ABOUT THREE BLOCKS FROM HERE, THEY HAVE
7 OPENED FOR THE HOLIDAYS A NEW ICE SKATING RINK. SO IF ANY OF
8 YOU LOVE TO ICE SKATE BUT YOU DON'T HAVE ANYONE TO DO IT,
9 BRING YOUR ICE SKATES AND AFTER TRIAL TO JUST WALK TO EIGHTH
10 AND WASHINGTON OR CLAY, IT IS NOT VERY FAR, AND YOU CAN GO ICE
11 SKATING. GET IN THE HOLIDAY SPIRIT. I, ON THE OTHER HAND, IF
12 I TRIED TO DO THAT WOULD BREAK MY LEG.

13 (JOSE NAVARRO, CALLED AS A WITNESS FOR THE PLAINTIFF,
14 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

15 **THE WITNESS:** I DO.

16 **THE CLERK:** PLEASE BE SEATED. IF YOU WILL SCOOT UP
17 TO THE MICROPHONE AND THEN PLEASE STATE YOUR FULL NAME AND
18 SPELL YOUR LAST NAME.

19 **THE WITNESS:** JOSE NAVARRO. N-A-V-A-R-R-O.

20 **THE COURT:** GOOD MORNING, SIR.

21 **THE WITNESS:** GOOD MORNING.

22 **THE COURT:** YOU MAY PROCEED.

23 DIRECT EXAMINATION

24 **BY MR. ETTINGHOFF:**

25 **Q.** GOOD MORNING, MR. NAVARRO.

1 **A.** GOOD MORNING.

2 **Q.** DID YOU RECEIVE A SUBPOENA TO TESTIFY TODAY?

3 **A.** YES, I DID.

4 **Q.** SO YOU ARE NOT HERE VOLUNTARILY, CORRECT?

5 **A.** NO.

6 **Q.** DO YOU CURRENTLY WORK AT THE SHELL MARTINEZ REFINERY?

7 **A.** YES, I DO.

8 **Q.** HOW LONG HAVE YOU WORKED THERE?

9 **A.** JUST UNDER THREE YEARS. JANUARY WILL BE THREE YEARS.

10 **Q.** OKAY. AND THEN BEFORE THOSE THREE YEARS, DID YOU -- WHAT
11 DID YOU DO?

12 **A.** I WAS A CONTRACTOR AT SHELL IN MARTINEZ FROM 2004 UP UNTIL
13 GETTING HIRED ON.

14 **Q.** YOU SAID A CONTRACTOR?

15 **A.** YEAH, A CONTRACTOR. SO I WORKED FOR A CONTRACTED COMPANY,
16 KIND OF LIKE A THIRD-PARTY COMPANY JUST DOING MAINTENANCE
17 AROUND THE REFINERY. I WORKED AS A CARPENTER.

18 **Q.** AS A CARPENTER.

19 WHEN DID YOU START AS A CARPENTER AT SHELL?

20 **A.** 2004.

21 **Q.** SO YOU'VE BEEN THERE FOR OVER TEN YEARS REALLY AS A
22 CONTRACTOR BUT THEN NOW AS A PROCESS OPERATOR; IS THAT
23 CORRECT?

24 **A.** YES.

25 **Q.** WHEN DID YOU BECOME A PROCESS OPERATOR?

1 **A.** JANUARY 2016.

2 **Q.** AND WAS CIARA NEWTON IN YOUR NEW HIRE CLASS?

3 **A.** YES, SHE WAS.

4 **Q.** SO YOU BOTH WERE IN TRAINING COORDINATED BY JEFF ANDRE FOR
5 THE FIRST SIX WEEKS OR SO OF YOUR JOB?

6 **A.** YEAH.

7 **Q.** AND AFTER TRAINING, YOU BOTH WERE ASSIGNED TO OPCEN,
8 CORRECT?

9 **A.** CORRECT.

10 **Q.** WAS JEFF FISCHER YOUR SUPERVISOR IN OPCEN?

11 **A.** FOR THE FIRST -- WHILE WE WERE TRAINING, YES. HE WAS OUR
12 SUPERVISOR.

13 **Q.** OKAY. HOW WOULD YOU DESCRIBE MR. FISCHER'S TRAINING
14 STYLE?

15 **A.** I WOULD SAY --

16 **MR. LAFAYETTE:** OVERBROAD, YOUR HONOR.

17 **THE COURT:** I CAN'T HEAR YOU.

18 **MR. LAFAYETTE:** OBJECTION --

19 **THE COURT:** OVERRULED. GO AHEAD. TELL US WHAT HIS
20 STYLE WAS.

21 **THE WITNESS:** I WOULD SAY HE WAS OLD SCHOOL, REAL
22 UPFRONT. I MEAN, IF YOU WERE STRUGGLING WITH SOMETHING, HE
23 WOULD LET YOU KNOW AND, YOU KNOW, HE -- HE WOULD MAKE...
24 THAT'S HOW I WOULD DESCRIBE IT.

1 **BY MR. ETTINGHOFF:**

2 **Q.** WE'VE HEARD TESTIMONY IN THIS CASE THAT MR. FISCHER WAS
3 IMPATIENT. WOULD YOU AGREE WITH THAT?

4 **A.** NO, I WOULDN'T SAY HE WAS TOO IMPATIENT. HE -- LIKE I
5 SAID, IF HE SAW YOU STRUGGLE, HE WOULD LET YOU KNOW ABOUT IT
6 BUT HE WOULD ALSO TRY TO WORK WITH YOU.

7 **Q.** DID YOU EVER HEAR MR. FISCHER EXPRESS HOW HE FELT ABOUT
8 WOMEN WORKING AT OPCEN?

9 **A.** NO. THE ONLY THING I HEARD HIM SAY WAS THAT TYPICALLY
10 WOMEN DON'T LAST LONG IN OPCEN AND THAT THEY TEND TO LEAVE OR
11 THEY DON'T MAKE IT IN THE DEPARTMENT.

12 **Q.** OKAY. AND AS PART OF YOUR TRAINING, DID YOU HAVE TO PASS
13 ANY TESTS?

14 **A.** YEAH. WE HAD A WRITTEN EXAM AND THEN WE HAD A FIELD WALK
15 EXAM WITH -- WITH THE OP SPEC.

16 **Q.** AND YOU PASSED BOTH --

17 **A.** OPERATION SPECIALIST. SORRY.

18 **Q.** WHAT DOES THAT SAY?

19 **A.** OPERATION SPECIALIST.

20 **Q.** OPERATION SPECIALIST?

21 **A.** FOR SHORT, WE SAY OP SPEC.

22 **Q.** OP SPEC. AND YOU PASSED THOSE TESTS?

23 **A.** YES, I PASSED BOTH.

24 **Q.** DO YOU KNOW IF MS. NEWTON PASSED THOSE TESTS?

25 **A.** YES, SHE DID.

1 **Q.** DO YOU KNOW WHAT A PARALLEL TRAINING CHECKLIST IS?

2 **A.** YES.

3 **Q.** CAN YOU DESCRIBE WHAT THAT IS?

4 **A.** IT'S JUST A CHECKLIST WHERE IT HAS DIFFERENT TASKS THAT WE
5 HAVE TO PERFORM AS OPERATORS AND YOU HAVE TO GO OUT WITH A
6 QUALIFIED OPERATOR AND JUST SHOW YOU ARE CAPABLE OF PERFORMING
7 THOSE TASKS.

8 ONCE THEY SEE YOU OUT IN THE FIELD DEMONSTRATE HOW DO IT,
9 THEY WILL SIGN OFF ON YOUR TRAINING CHECKLIST.

10 **Q.** DID YOU EVER SEE MS. NEWTON'S PARALLEL TRAINING CHECKLIST?

11 **A.** I SAW IT. YEAH, I DID SEE IT.

12 **Q.** WHY?

13 **A.** IT WAS RETURNED TO HER BY JEFF FISCHER. HE RETURNED IT TO
14 HER SAYING THAT --

15 **MR. LAFAYETTE:** OBJECTION, HEARSAY.

16 **THE COURT:** OVERRULED.

17 **THE WITNESS:** YEAH, IT WAS GIVEN BACK TO HER. AND IT
18 WAS SAID THAT THE SIGNATURES BY THE QUALIFIED OPERATORS
19 WEREN'T CONSIDERED SUBJECT MATTER EXPERTS SO THEY COULDN'T
20 SIGN HER OFF.

21 **BY MR. ETTINGHOFF:**

22 **Q.** DID THAT SEEMS FAIR TO YOU?

23 **A.** NO --

24 **MR. LAFAYETTE:** OBJECTION, IMPROPER OPINION.

25 **THE COURT:** SUSTAINED.

MR. LAFAYETTE: MOVE TO STRIKE.

MR. ETTINGHOFF: NO FURTHER QUESTIONS.

THE COURT: CROSS?

CROSS-EXAMINATION

BY MR. LAFAYETTE:

Q. GOOD MORNING, SIR.

A. GOOD MORNING.

Q. HOW ARE YOU?

A. I'M DOING GOOD. THANK YOU.

Q. YOU WERE IN THE TRAINING CLASS WITH MS. NEWTON?

A. YES, I WAS.

Q. WERE YOU EVER LATE?

A. NO.

Q. DID YOU OBSERVE -- WAS MS. NEWTON EVER LATE?

A. YES, SHE WAS.

Q. WERE ANY OF YOUR OTHER COWORKERS EVER LATE?

A. NO.

Q. DO YOU EVER SEE MR. FISCHER DO ANYTHING TO MS. NEWTON
BECAUSE OF HER GENDER?

A. CAN YOU BE MORE . . .

Q. DID YOU EVER SEE HIM DO ANYTHING TO DISPARAGE HER BECAUSE OF HER GENDER?

A NO

Q DID YOU EVER SEE HTM CURSE AT HER?

A NOT DIRECTLY AT HER EVERYONE CURSES IN THE REFINERY

1 NEVER DIRECTLY AT HER.

2 Q. DID YOU PERSONALLY HEAR THE CONVERSATION THAT TOOK PLACE
3 BETWEEN MS. NEWTON AND MR. FISCHER REGARDING HER PARALLEL
4 TRAINING LIST?

5 A. I WASN'T THERE FOR THE CONVERSATION THEY HAD, BUT
6 AFTERWARDS -- COUPLE DAYS AFTER, SHE SHOWED ME HER PARALLEL
7 TRAINING. THAT'S WHEN SHE TOLD ME ABOUT IT.

8 Q. IS YOUR UNDERSTANDING ABOUT WHAT HAPPENED BETWEEN HER AND
9 MR. FISCHER WITH REGARD TO THE PARALLEL TRAINING CHECKLIST
10 BASED UPON WHAT MS. NEWTON TOLD YOU?

11 A. YES.

12 Q. DID YOU EVER TALK TO MR. CURRAN -- TO MR. FISCHER TO FIND
13 OUT WHAT, IN FACT, HAPPENED?

14 A. NO, I DID NOT.

15 Q. WHEN -- DO YOU REMEMBER THAT THERE WAS A POINT IN TIME
16 WHEN MS. NEWTON HAD TO TAKE BEREAVEMENT LEAVE?

17 A. SHE HAD TO WHAT?

18 Q. TAKE BEREAVEMENT LEAVE. HER FATHER PASSED?

19 A. YES.

20 Q. AS SHE WAS COMING BACK, DID MR. FISCHER EVER MAKE ANY
21 COMMENTS TO YOU GUYS ABOUT WHAT YOU GUYS WOULD HAVE TO DO WHEN
22 SHE RETURNED?

23 A. YEAH. HE SAID JUST TRY AND HELP HER GET BACK UP TO SPEED
24 AND HELP HER CATCH UP ON THINGS.

25 MR. LAFAYETTE: NO FURTHER QUESTIONS, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. ANY RE-EXAMINATION?

2 **MR. ETTINGHOFF:** NO FURTHER QUESTIONS.

3 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN. THANK
4 YOU.

5 **THE WITNESS:** THANK YOU.

6 **THE COURT:** NEXT WITNESS.

7 **MS. NUGENT:** YOUR HONOR, THE PLAINTIFF CALLS RICHARD
8 METCALF.

9 (**RICHARD METCALF**, CALLED AS A WITNESS FOR THE PLAINTIFF,
10 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

11 **THE WITNESS:** YES.

12 **THE CLERK:** PLEASE BE SEATED. AND IF YOU WILL SCOOT
13 UP TO THE MICROPHONE, AND THEN PLEASE STATE YOUR FULL NAME AND
14 SPELL YOUR LAST NAME.

15 **THE WITNESS:** RICHARD LEE METCALF. M-E-T-C-A-L-F.

16 **THE COURT:** GOOD MORNING, SIR.

17 **THE WITNESS:** THANK YOU. GOOD MORNING.

18 **MS. NUGENT:** MAY I PROCEED?

19 **THE COURT:** YES, YOU MAY.

20 (BINDER HANDED TO WITNESS.)

21 DIRECT EXAMINATION

22 **BY MS. NUGENT:**

23 **Q.** GOOD MORNING, MR. METCALF.

24 **A.** GOOD MORNING.

25 **Q.** WHERE DO YOU WORK?

1 **A.** SHELL REFINERY MARTINEZ.

2 **Q.** MARTINEZ?

3 **A.** YES.

4 **Q.** HOW LONG HAVE YOU WORKED THERE?

5 **A.** APPROXIMATELY 17 YEARS.

6 **Q.** WHAT'S YOUR POSITION NOW?

7 **A.** SHIFT TEAM LEADER.

8 **Q.** HOW LONG HAVE YOU BEEN A SHIFT TEAM LEADER?

9 **A.** SINCE -- A LITTLE OVER A YEAR.

10 **Q.** SO SOMETIME IN 2017?

11 **A.** YES.

12 **Q.** OKAY. AND 2016, WERE YOU A TEMPORARY SHIFT TEAM LEADER?

13 **A.** YES.

14 **Q.** AND AT THAT TIME WERE YOU SEEKING A PROMOTION TO THE
15 POSITION YOU HAVE NOW?

16 **A.** YES.

17 **Q.** AND THERE WERE A COUPLE OF OPEN POSITIONS AT THAT TIME,
18 RIGHT?

19 **A.** I BELIEVE -- I DON'T KNOW.

20 **Q.** THE 2016 TIME PERIOD, YOU UNDERSTOOD THAT THERE WERE SOME
21 SHIFT TEAM LEAD POSITIONS THAT WERE OPEN, RIGHT?

22 **A.** MAYBE, YEAH. I DON'T KNOW.

23 **Q.** AS A TEMPORARY SHIFT TEAM LEADER THOUGH, YOU WERE TRYING
24 TO SEEK A POSITION TO PERMANENT, RIGHT?

25 **A.** ABSOLUTELY.

1 **Q.** AND YOU KNEW ERIC PEREZ HAD A SAY IN WHO WAS GOING TO GET
2 THE PERMANENT POSITIONS, RIGHT?

3 **A.** I BELIEVE SO.

4 **Q.** AS A SHIFT TEAM LEAD, YOU HAVE WRITTEN IN YOUR EMPLOYEES'
5 POSITIVE DISCIPLINE LOGS, RIGHT?

6 **A.** THAT'S CORRECT.

7 **Q.** YOU RECEIVED TRAINING ON HOW TO DO THAT, WHAT THE PROCESS
8 IS --

9 **A.** YES.

10 **Q.** -- WHAT CIRCUMSTANCES THAT YOU WOULD WRITE IN THE LOG FOR,
11 RIGHT?

12 **A.** YES.

13 **Q.** AND A PD LOG IS SUPPOSED TO DOCUMENT GOOD BEHAVIORS AND
14 BAD BEHAVIORS; ISN'T THAT TRUE?

15 **A.** THAT'S CORRECT.

16 **Q.** AND YOU ESTIMATE THAT AS A SUPERVISOR YOU WRITE IN YOUR
17 EMPLOYEE'S PD LOGS ON AVERAGE ABOUT ONCE A MONTH, RIGHT?

18 **A.** MAYBE, YEAH.

19 **Q.** AND TO YOU A PD LOG IS -- IT'S ABOUT TRAINING, ISN'T IT?

20 **A.** NO.

21 **Q.** WHAT DO YOU THINK IT'S ABOUT?

22 **A.** IT'S ABOUT REWARDING EMPLOYEES FOR GOOD DEEDS THAT THEY
23 HAVE DONE.

24 **Q.** AND ALSO ACKNOWLEDGING BEHAVIORS SO THAT THE EMPLOYEES CAN
25 CHANGE AND CORRECT THEM, RIGHT?

1 **A.** YEAH.

2 **Q.** IT IS NOT ABOUT MISTAKES THOUGH, IS IT? IT'S ABOUT
3 TRAINING?

4 **A.** I DON'T KNOW. I DON'T QUITE UNDERSTAND THAT.

5 WHAT DO YOU MEAN BY IT'S NOT ABOUT MISTAKES?

6 **Q.** IT IS YOUR UNDERSTANDING IF THERE IS A COACHING IN THE PD
7 FILE, THAT THAT MEANS THE PD FILE -- IT IS NOT ABOUT THOSE
8 MISTAKES, THOUGH, IT IS REALLY ABOUT TRAINING THAT EMPLOYEE,
9 ISN'T IT?

10 **A.** IT'S ABOUT COACHING AND REWARDING.

11 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO READ FROM
12 THE... MR. METCALF'S DEPOSITION, PAGE 96, LINES 15 THROUGH 21.

13 **MR. LAFAYETTE:** I DON'T THINK THAT IS IMPEACHMENT.

14 **THE COURT:** OVERRULED. GO AHEAD.

15 **MS. NUGENT:** (READING)

16 "QUESTION: IS IT YOUR UNDERSTANDING THAT IF THERE IS
17 A COACHING IN THE PD FILE, THAT THAT MEANS THAT THE
18 EMPLOYEE MADE A MISTAKE?"

19 "ANSWER: THE PD FILE IS NOT ABOUT MISTAKES. THE PD
20 FILE IS ABOUT TRAINING."

21 **BY MS. NUGENT:**

22 **Q.** IN YOUR UNDERSTANDING OF THE WAY THE PD FILE IS SET UP, IF
23 YOU ARE COACHING SOMEBODY ON SOMETHING AND THEY AGREE WITH
24 WHAT YOU PUT DOWN AND NEVER MAKE THAT MISTAKE AGAIN OR YOU
25 NEVER SEE THEM MAKE THAT MISTAKE AGAIN, IT DOESN'T HAVE ANY

1 FURTHER RELEVANCE, DOES IT?

2 **MR. LAFAYETTE:** OBJECTION, THE QUESTION IS VAGUE AND
3 AMBIGUOUS.

4 **THE COURT:** OVERRULED. YOU CAN ANSWER IT IF YOU
5 UNDERSTAND IT.

6 **THE WITNESS:** I DON'T QUITE UNDERSTAND IT. THERE WAS
7 A LOT OF THINGS WITH IT. CAN YOU REASK IT?

8 **BY MS. NUGENT:**

9 **Q.** SURE.

10 DO YOU SEE A -- IF YOU MAKE AN ENTRY IN THE PD LOG AND
11 THAT EMPLOYEE CORRECTS THAT MISTAKE AND YOUR UNDERSTANDING IS
12 THEN THAT THAT ENTRY DOESN'T HAVE ANY FURTHER BEARING ON THAT
13 EMPLOYEE, DOES IT?

14 **MR. LAFAYETTE:** OBJECTION, INCOMPLETE HYPOTHETICAL,
15 IMPROPER OPINION, LACKING IN FOUNDATION WITH THIS WITNESS.

16 **THE COURT:** LAY SOME FOUNDATION.

17 **MS. NUGENT:** I'LL MOVE ON, YOUR HONOR.

18 **BY MS. NUGENT:**

19 **Q.** YOU KNOW CIARA NEWTON, RIGHT?

20 **A.** YES.

21 **Q.** YOU WERE HER SHIFT TEAM LEAD AT A CERTAIN POINT; ISN'T
22 THAT TRUE?

23 **A.** YES.

24 **Q.** YOU WERE A SHIFT TEAM LEAD FOR ABOUT SIX WEEKS TO TWO
25 MONTHS IN THE SUMMER OF 2016, RIGHT?

1 **A.** I'VE BEEN A SHIFT TEAM LEAD LONGER THAN THAT.

2 **Q.** I'M TALKING SPECIFICALLY MS. NEWTON'S SHIFT TEAM LEAD.

3 **A.** YES.

4 **Q.** AND AFTER SHE JOINED YOUR TEAM, YOU TOLD MS. NEWTON SHE
5 HAD A CLEAN SLATE WITH YOU; ISN'T THAT TRUE?

6 **A.** YES.

7 **Q.** AFTER A FEW WEEKS OF MS. NEWTON BEING ON YOUR TEAM, YOU
8 NOTICED THAT SHE SEEMED A LITTLE TIMID IN HER WORK, DIDN'T
9 YOU?

10 **A.** YES.

11 **Q.** AND YOU ASKED HER IF THAT WAS BECAUSE SHE WAS AFRAID OF
12 BEING WRITTEN UP FOR EVERYTHING, RIGHT?

13 **A.** I BELIEVE SO, YEAH.

14 **Q.** AND SHE TOLD YOU THAT, YEAH, SHE WAS AFRAID OF GETTING
15 WRITTEN UP FOR EVERYTHING; ISN'T THAT TRUE?

16 **A.** I DON'T RECALL WHAT SHE SAID.

17 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO READ FROM
18 THE WITNESS'S DEPOSITION THAT HE MADE UNDER OATH. PAGE 111,
19 LINE 23 THROUGH 112, 7.

20 **THE COURT:** GO AHEAD.

21 **MS. NUGENT:** (READING)

22 "QUESTION: OKAY. AND WHAT DID YOU MEAN SHE WOULD
23 HAVE A CLEAN SLATE WITH YOU?

24 "ANSWER: AS I EXPLAINED TO HER I NOTICED THAT A LOT
25 OF THE THINGS THAT SHE WAS DOING, SHE WAS VERY TIMID

1 IN HER WORK. AND I ASKED HER THE SPECIFIC QUESTION,
2 IS THAT BECAUSE OF -- SHE'S AFRAID OF GETTING WRITTEN
3 UP FOR EVERYTHING? SHE ANSWERED YES. AND SO I TOLD
4 HER FOR ME TO BE ABLE TO MAKE A FAIR ASSESSMENT OF
5 HER, I NEED HER TO DO HER JOB PROPERLY AND SHE HAS A
6 CLEAN SLATE WITH ME."

7 **BY MS. NUGENT:**

8 **Q.** DURING THE TIME THAT YOU SUPERVISED MS. NEWTON, DID YOU
9 EVER SEE HER COMMIT A SAFETY VIOLATION?

10 **A.** I DON'T RECALL, NO.

11 **Q.** AND DURING THE TIME YOU SUPERVISED MS. NEWTON, SHE WAS
12 NEVER LATE, WAS SHE?

13 **A.** I DON'T KNOW.

14 **Q.** YOU DON'T KNOW? YOU NEVER DOCUMENTED HER FOR BEING LATE
15 TO WORK, DID YOU?

16 **A.** I DON'T RECALL, NO.

17 **Q.** AT SOME POINT WHILE YOU WERE SUPERVISING MS. NEWTON, YOU
18 ASKED HER IF SHE WANTED TO START TRAINING ON HER SECOND JOB,
19 RIGHT?

20 **A.** YES.

21 **Q.** AND YOU TOLD HER THAT HE SHE WAS RIGHT WHERE SHE NEEDED TO
22 BE?

23 **A.** MAYBE I DON'T RECALL. BUT OKAY.

24 **Q.** YOU DID HAVE A CONVERSATION ABOUT THAT, DIDN'T YOU?

25 **A.** YES. I DON'T RECALL TELLING HER THAT SHE WAS RIGHT WHERE

1 SHE NEEDED TO BE.

2 Q. BUT YOU DID HAVE A CONVERSATION ABOUT THAT, ABOUT RIGHT
3 WHERE SHE NEEDED TO BE, DIDN'T YOU?

4 A. I DON'T RECALL.

5 MS. NUGENT: YOUR HONOR, I WOULD LIKE TO READ FROM
6 THE WITNESS'S DEPOSITION AT 117, LINE 24 THROUGH 118, LINE 1.

7 THE COURT: GO AHEAD.

8 MS. NUGENT: (READING)

9 "QUESTION: DID YOU EVER TELL CIARA THAT SHE WAS
10 RIGHT WHERE SHE NEEDED TO BE?

11 "ANSWER: I BELIEVE WE HAD A CONVERSATION ABOUT
12 THAT."

13 MR. LAFAYETTE: YOUR HONOR, I THINK FOR COMPLETENESS,
14 IT SHOULD READ THROUGH LINE 4.

15 THE COURT: READ THROUGH LINE 4.

16 MS. NUGENT: (READING)

17 "QUESTION: AND DID YOU?

18 "ANSWER: I DON'T RECALL SPECIFICS OF WHAT I SAID
19 THOUGH, BUT I DON'T KNOW."

20 BY MS. NUGENT:

21 Q. YOU TOLD MS. NEWTON THAT YOU THOUGHT SHE WAS A GOOD
22 OPERATOR, RIGHT?

23 A. I DON'T RECALL THAT.

24 Q. IN YOUR OPINION IT TAKES YEARS BEFORE YOU KNOW WHETHER
25 SOMEONE IS GOING TO BE A GOOD OPERATOR, DOESN'T IT?

1 **A.** NO, NOT NECESSARILY.

2 **Q.** BASED ON YOUR EXPERIENCE BEING AT THE SHELL MARTINEZ
3 REFINERY SINCE WHAT, 2002?

4 **A.** YES.

5 **Q.** BASED ON YOUR EXPERIENCE YOU THINK THAT SOMETIMES PEOPLE
6 START OUT AND YOU THINK THAT THEY ARE GOING TO BE GREAT AND
7 THEN THEY TURN OUT NOT TO BE; ISN'T THAT TRUE?

8 **A.** YES.

9 **Q.** AND THEN SOME PEOPLE START OUT AND THEN YOU THINK THAT
10 THEY ARE NOT SO GOOD AND THEN THEY TURN OUT TO BE GREAT; ISN'T
11 THAT TRUE?

12 **A.** SOMETIMES, YES.

13 **Q.** AND ISN'T IT TRUE THAT IT TAKES YEARS BEFORE YOU KNOW
14 WHETHER SOMEONE IS A GOOD OPERATOR OR NOT?

15 **A.** NOT ALL THE TIME, NO.

16 **Q.** NOT ALL THE TIME. BUT THAT IS YOUR GENERAL OPINION, ISN'T
17 IT?

18 **A.** NO, NOT ALL THE TIME.

19 **Q.** LET'S TALK NOW ABOUT THE STICKER THAT WAS LEFT ON
20 MS. NEWTON'S DESK. DO YOU RECALL THAT?

21 **A.** YES.

22 **Q.** AND ERIC PEREZ PRESENTED YOU WITH THAT STICKER THAT
23 MS. NEWTON FOUND ON HER DESK, DIDN'T HE?

24 **A.** YES.

25 **Q.** AND HE TOLD YOU MS. NEWTON WAS UNHAPPY OR UPSET TO FIND

1 THAT THERE, DIDN'T HE?

2 **A.** I BELIEVE SO.

3 **Q.** AND YOU KNEW THAT THAT SAME STICKER WAS ON SOME PEOPLE'S
4 HARD HATS?

5 **A.** AT THAT TIME, NO.

6 **Q.** AT SOME POINT YOU DID KNOW THAT THAT STICKER WAS ON SOME
7 PEOPLE'S HARD HATS; ISN'T THAT TRUE?

8 **A.** YES.

9 **Q.** AND YOU KNOW THAT JONATHAN BOYLE HAD THAT STICKER ON HIS
10 HARD HAT?

11 **A.** PROBABLY -- COULD HAVE BEEN -- I DON'T KNOW SPECIFICALLY.
12 I DON'T RECALL SPECIFICALLY WHO IT WAS, BUT IT WAS ON A HARD
13 HAT, YES.

14 **Q.** YOU AGREE THAT PEOPLE COULD FIND THAT STICKER OFFENSIVE,
15 RIGHT?

16 **A.** I COULD SEE HOW SOME -- HOW A -- SOMEONE COULD, YES.

17 **Q.** AND YOU UNDERSTOOD THAT STICKER'S MESSAGE TO REFER
18 METAPHORICALLY TO LESS OF A PERSON; ISN'T THAT TRUE?

19 **A.** I GUESS, YEAH.

20 **Q.** AND YOU'RE NOT AWARE OF THAT STICKER BEING LEFT ON ANYONE
21 ELSE'S DESK OTHER THAN MS. NEWTON'S, RIGHT?

22 **A.** I AM NOT AWARE OF THAT, NO.

23 **Q.** YOU UNDERSTOOD THE STICKER VIOLATED SHELL'S POLICIES?

24 **A.** I BELIEVE SO, YES.

25 **Q.** AND YOU'RE NOT AWARE OF ANY DISCIPLINARY ACTION BEING

1 TAKEN AGAINST ANYONE AS A RESULT OF THAT STICKER BEING LEFT ON
2 MS. NEWTON'S DESK, ARE YOU?

3 **A.** NOT THAT I KNOW OF, NO.

4 **Q.** YOU DID TALK WITH MS. NEWTON ABOUT THAT SITUATION WHEN YOU
5 FOUND OUT ABOUT IT, RIGHT?

6 **A.** YES.

7 **Q.** YOU WERE HER SUPERVISOR AT THE TIME?

8 **A.** YES.

9 **Q.** AND DURING THAT CONVERSATION YOU ASKED MS. NEWTON IF SHE
10 WAS EASILY OFFENDED?

11 **A.** NO, I DON'T RECALL IT GOING THAT WAY.

12 **Q.** DID YOU EVER ASK MS. NEWTON IF SHE WAS EASILY OFFENDED?

13 **A.** I DON'T RECALL THE SPECIFICS OF THAT CONVERSATION WITH
14 THAT STATEMENT IN THERE, BUT....

15 **Q.** IN THE CONVERSATION WHERE YOU TALKED TO MS. NEWTON ABOUT
16 THE STICKER, YOU ASKED HER IF SHE WAS EASILY OFFENDED, DIDN'T
17 YOU?

18 **A.** I DON'T RECALL THE SPECIFICS OF THAT CONVERSATION THAT
19 WAY, NO.

20 **Q.** DO YOU DENY ASKING HER THAT?

21 **A.** I DON'T DENY IT, NO.

22 **Q.** YOU DON'T BELIEVE SOMEONE WOULD HAVE TO BE EASILY OFFENDED
23 TO BE OFFENDED BY THAT STICKER, DO YOU?

24 **A.** I COULD SEE HOW SOMEONE COULD BE OFFENDED BY THAT, YES.

25 **Q.** WHEN YOU TALKED WITH MS. NEWTON ABOUT THAT STICKER, SHE

1 TOLD YOU AT SOME POINT THAT SHE JUST WANTED TO GET ALONG WITH
2 EVERYBODY AND DO HER JOB; ISN'T THAT TRUE?

3 **A.** I BELIEVE SO, YES.

4 **Q.** AND I UNDERSTAND THAT AFTER THAT HAPPENED, A BUNCH OF
5 PEOPLE FROM THE REFINERY WENT TO A GIANTS GAME; IS THAT RIGHT?

6 **A.** WE HAD A TEAM BUILDING EVENT AT A GIANTS GAME.

7 **Q.** AND WE LEARNED THIS MORNING YOU HAVE A PICTURE OF THAT
8 TEAM BUILDING EVENT?

9 **A.** I HAVE FOUND ONE.

10 **Q.** FOUND IT RECENTLY?

11 **A.** IT POPPED UP ON FACEBOOK A YEAR AGO.

12 **Q.** A YEAR AGO --

13 **A.** NO. FOR THE SEPTEMBER, LIKE THE ONE YEAR REVIEW IN
14 FACEBOOK.

15 **Q.** YOU BROUGHT IT WITH YOU TO COURT TODAY?

16 **A.** I DON'T KNOW. IT COULD BE ON THERE.

17 **Q.** IN THAT PICTURE, DOES IT SHOW THAT MS. NEWTON WAS TRYING
18 TO GET ALONG WITH EVERYBODY?

19 **A.** I DIDN'T KNOW SHE WASN'T GETTING ALONG WITH EVERYBODY.

20 **Q.** YOU WOULD HAVE MEETINGS WITH YOUR TEAM BEFORE EVERY SHIFT,
21 RIGHT?

22 **A.** YES.

23 **Q.** AND DURING THOSE MEETINGS YOU WOULD ALL DISCUSS WHAT IS
24 CALLED A SAFETY TOPIC?

25 **A.** YES.

1 **Q.** AT ONE OF THOSE MEETINGS, DID YOU BRING UP THE TOPIC
2 SOMETHING ALONG THE LINES OF WHAT FAMILIES SHOULD DO IF
3 SOMETHING WENT WRONG AT HOME?

4 **A.** YES.

5 **Q.** AND DURING THAT DISCUSSION YOU MADE A REFERENCE TO WIVES
6 PANICKING; ISN'T THAT TRUE?

7 **A.** I DON'T RECALL IT IN THAT EXACT STATEMENT, NO.

8 **Q.** DID YOU MAKE A REFERENCE TO WIVES PANICKING IN THAT SAFETY
9 MEETING?

10 **A.** I DON'T RECALL IT IN THAT REFERENCE, NO.

11 **Q.** I'M JUST ASKING ABOUT THAT SAFETY MEETING, IF YOU MADE A
12 REFERENCE TO WIVES PANICKING. YOU DID, DIDN'T YOU?

13 **A.** I DON'T RECALL IT THAT WAY, NO.

14 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO READ FROM
15 THE WITNESS'S DEPOSITION AT 172, LINE 2 THROUGH 6.

16 (PAUSE IN THE PROCEEDINGS.)

17 **THE COURT:** GO AHEAD.

18 **MS. NUGENT:** (READING)

19 "QUESTION: DO YOU RECALL ANYBODY MAKING A REFERENCE
20 TO WIVES PANICKING?

21 "ANSWER: I PROBABLY DID. I JUST DID IN THE
22 STATEMENT I JUST GAVE YOU. I'M SURE I MADE A
23 REFERENCE TO MY WIFE PANICKING, YES."

24 **MR. LAFAYETTE:** IT SHOULD READ FOR COMPLETENESS DOWN
25 TO LINE 15.

THE COURT: WHILE I'M LOOKING AT THAT, GIVE THAT DOCUMENT TO MS. SMALLETS RIGHT NOW, MR. LAFAYETTE.

MR. LAFAYETTE: OH, THE PHOTOGRAPH?

(DOCUMENT HANDED TO COUNSEL.)

THE COURT: READ THROUGH 15.

MS . NUGENT : (READING)

"QUESTION: I'M TRYING TO BE CLEAR. NOT SOMEONE
MAKING A REFERENCE TO THEIR OWN WIFE PANICKING. I'M
ASKING IF ANYONE MADE A REFERENCE TO WIVES PANICKING?

"ANSWER: I MIGHT HAVE MADE THAT STATEMENT. I DO NOT KNOW SPECIFICALLY BUT I COULD HAVE SAID OUR WIVES PANIC. WHATEVER. BECAUSE THAT'S WHAT I -- I HAVE A WIFE. THAT'S -- I WAS MEANING OUR FAMILY MEMBERS AT HOME I MADE THAT STATEMENT. I DON'T RECALL SPECIFICALLY IF I DID OR NOT."

BY MS. NUGENT:

Q. CIARA WAS AT THAT MEETING, RIGHT, WHERE YOU DESCRIBED WIVES PANICKING?

A. I DON'T RECALL IT WIVES PANICKING. BUT, YES, SHE WAS AT THE SAFETY MEETINGS ABOUT FIRES IN YOUR HOUSE, YES.

Q. HAVE YOU HEARD MALE EMPLOYEES AT SHELL TALKING OVER THE RADIOS IN FAKE HIGH PITCHED, STEREOTYPICALLY FEMALE VOICES?

A. I'VE HEARD THEM SPEAK IN A HIGH-PITCHED VOICE, YES.

Q. YOU'VE HEARD THAT THOUSANDS OF T

Q. IN THE THOUSANDS?

A. I WOULDN'T BE ABLE TO TELL YOU A NUMBER.

Q. I'M ASKING YOU IF IT IS IN THE THOUSANDS, MR. METCALF?

A. I DON'T -- I DON'T KNOW.

5 || Q. OKAY.

6 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO READ FROM
7 THE WITNESS'S DEPOSITION AT 180, 22 THROUGH 181, 6.

8 || (PAUSE IN THE PROCEEDINGS.)

9 **THE COURT:** JUST READ 181, 5 AND 6.

10 || MS. NUGENT: (READING)

11 "QUESTION: HOW MANY TIMES DID YOU HEAR THAT HAPPEN?

12 "ANSWER: THOUSANDS."

13 || BY MS. NUGENT:

14 Q. AND YOU UNDERSTOOD THOSE VOICES TO BE -- OVER THE RADIO TO
15 BE FAKE, HIGH-PITCHED, STEREOTYPICALLY FEMALE VOICES; ISN'T
16 THAT TRUE?

17 **MR. LAFAYETTE:** OBJECTION, PREVIOUSLY ASKED AND
18 ANSWERED.

19 THE COURT: OVERRULED.

20 **THE WITNESS:** I COULD BE -- THERE'S -- IT COULD BE,
21 YES.

22 BY MS. NUGENT:

23 Q. ONCE OR TWICE YOU'VE HEARD SOMEONE SAY TO THE PEOPLE ON
24 THE RADIO KNOCK IT OFF, RIGHT?

A. I'M SURE I HAVE, YEAH.

Q. YOU'VE NEVER HEARD ANYONE SAY THAT WAS INAPPROPRIATE,
THOUGH, HAVE YOU?

A. I DON'T RECALL IF I HAVE OR I HAVEN'T.

MS. NUGENT: YOUR HONOR, MAY I READ FROM THE WITNESS'S DEPOSITION AT 181, 10 THROUGH 13.

(PAUSE IN THE PROCEEDINGS.)

THE COURT: YES, GO AHEAD.

MS . NUGENT : (READING)

"QUESTION: HAVE YOU EVER HEARD ANYONE SAY TO THE
PEOPLE DOING THIS KNOCK IT OFF, THAT'S INAPPROPRIATE?

"ANSWER: I HAVE HEARD KNOCK IT OFF A TIME OR TWO,

YEAH. BUT NEVER IT WAS INAPPROPRIATE, NO."

BY MS. NUGENT:

Q. NOW, I WANT TO TALK ABOUT SOME PROGRESS REPORTS THAT YOU
PREPARED FOR MS. NEWTON. THE FIRST PROGRESS REPORT YOU
PREPARED FOR HER WAS AFTER YOU HAD BEEN SUPERVISING HER FOR
ABOUT SIX WEEKS, RIGHT?

A. THE ONLY REPORT I EVER PREPARED FOR HER WAS THAT SIX WEEKS.

O. YOU'VE ONLY PREPARED ONE PROGRESS REPORT FOR MS. NEWTON?

A. THAT'S CORRECT.

Q. ALL RIGHT. I WANT TO TALK A LITTLE BIT ABOUT PROGRESS REPORTS IN GENERAL, FIRST.

WHAT IS YOUR UNDERSTANDING OF WHAT THOSE ARE?

A. THEY ARE A MEANS OF DOCUMENTING AND COACHING YOUR

1 EMPLOYEES.

2 Q. AND FOR MS. NEWTON, DID YOU -- YOU HAD LOOKED AT SOME OF
3 THE ONES SHE HAD ALREADY RECEIVED BEFORE YOU PREPARED THE ONES
4 FOR HER, RIGHT?

5 A. I DON'T RECALL.

6 Q. IF YOU LOOK AT THE BINDER IN FRONT OF YOU, THERE ARE SOME
7 EXHIBITS. IF YOU WILL TURN TO THE ONE THAT'S LABELED 40,
8 FOUR-ZERO.

9 ARE YOU THERE?

10 A. YES.

11 Q. WHAT IS THAT?

12 A. IT'S A NEW HIRE PROGRESS REPORT.

13 Q. FOR CIARA NEWTON?

14 A. YES.

15 Q. PREPARED BY CAMERON CURRAN, RIGHT? CURRAN.

16 A. YES.

17 Q. THE DATE ON IT ON THE FRONT PAGE JULY 29TH, 2016?

18 A. YES.

19 Q. AND YOU UNDERSTOOD THAT MR. CURRAN WAS MS. NEWTON'S
20 SUPERVISOR BEFORE YOU, RIGHT?

21 A. YES.

22 Q. AND YOU HAD EXHIBIT 40 WHEN YOU PREPARED THE PROGRESS --
23 THE NEXT PROGRESS REPORT FOR HER, DIDN'T YOU?

24 A. I BELIEVE SO.

25 Q. AND YOU LOOKED AT IT, RIGHT?

1 **A.** I'M SURE I DID. I DON'T RECALL SPECIFICALLY.

2 **Q.** OKAY.

3 **MS. NUGENT:** I BELIEVE EXHIBIT 40 HAS BEEN ADMITTED
4 INTO EVIDENCE.

5 **THE COURT:** IT HAS BEEN.

6 **MS. NUGENT:** OKAY.

7 MR. ETTINGHOFF, WILL YOU --

8 **THE CLERK:** LET ME GET IT.

9 OKAY.

10 (DISPLAYED ON SCREEN.)

11 **MS. NUGENT:** IF YOU CAN BLOW UP JUST THE TOP.

12 **BY MS. NUGENT:**

13 **Q.** OKAY. AND THIS IS THE PROGRESS REPORT THAT YOU LOOKED AT
14 TO PREPARE THE ONE FOR CIARA NEWTON, YEP?

15 **A.** I MAY HAVE.

16 **Q.** OKAY. NOW, I WANT TO TAKE A LOOK AT WHAT HAS BEEN MARKED
17 IN YOUR BINDER EXHIBIT 60. IT'S IN YOUR BINDER.

18 ARE YOU THERE?

19 **A.** OKAY.

20 **Q.** WHAT IS THIS? I'M SORRY. WILL YOU LOOK AT 61?

21 WHAT IS THAT?

22 **A.** THIS IS AN INITIAL REVIEW THAT I DID.

23 **Q.** FOR WHO?

24 **A.** CIARA.

25 **Q.** WHAT IS THE DATE ON IT?

1 || **A.** 9/21/16.

2 Q. AT THAT TIME HOW MANY DAYS HAD YOU BEEN SUPERVISING
3 MS. NEWTON?

4 A. I DON'T KNOW THE EXACT NUMBER OF DAYS.

5 Q. WILL YOU LOOK AT THE TOP OF IT? WHERE IT SAYS TIME UNDER
6 YOUR SUPERVISION, WHAT DOES IT SAY THERE?

7 || A. 57 DAYS.

8 Q. ALL RIGHT. I WANT TO COMPARE EXHIBIT 40 TO EXHIBIT 61.

9 SO YOU CAN TAKE THEM OUT OF THE BINDER IF YOU WANT. WE'RE
10 GOING TO LOOK AT THEM BOTH BUT WE WILL ALSO PUT THEM UP ON THE
11 SCREEN.

12 (DISPLAYED ON SCREEN.)

13 BY MS. NUGENT:

14 Q. SO THE PROGRESS REPORT THAT YOU GOT FROM MR. CURRAN, IF WE
15 JUST TAKE A LOOK AT THE FIRST COUPLE OF BOXES ON THE FIRST
16 PAGE. I'LL WAIT UNTIL YOU ARE THERE.

17 (PAUSE IN THE PROCEEDINGS.)

18 THE ONE YOU GOT FROM MR. CURRAN UNDER SAFETY AND
19 HOUSEKEEPING HAD A NOTE IN IT THAT SAYS SHE STILL SHY IN THE
20 MORNING SAFETY MEETING AND NOT FORTHCOMING WITH HER UNIT INFO.

21 DO YOU SEE THAT?

22 **A.** YES.

23 Q. AND THEN THE -- WHAT YOU PREPARED IN EXHIBIT 61, YOU TOOK
24 OUT THAT LINE AND YOU PUT IN SHE IS DOING BETTER AT PROJECTING
25 AND CONVEYING UNIT INFO, DO YOU SEE THAT?

1 **A.** YES.

2 **Q.** IF YOU LOOK AT THE COMMENTS ON THE NEXT BOX, MR. CURRAN
3 SAID -- CURRAN -- GOSH. CURRAN. OKAY.

4 CURRAN, SOME ERRORS FOUND BUT SHE IS ACCEPTING OF
5 FEEDBACK.

6 DO YOU SEE THAT? THAT'S ALSO HIGHLIGHTED ON THE SCREEN
7 FOR YOU.

8 **A.** IN THE SAME BOX.

9 **Q.** YEAH. DO YOU SEE THAT LINE?

10 **A.** OH, TO THE RIGHT. OKAY. YES.

11 **Q.** AND YOU TOOK THAT OUT FROM WHAT YOU PREPARED ON
12 EXHIBIT 61.

13 **A.** YES.

14 **Q.** ALL RIGHT.

15 **A.** I DON'T KNOW IF I TOOK IT OUT, BUT -- OR IF I STARTED WITH
16 A BLANK ONE. I DON'T REMEMBER.

17 **Q.** YOU DON'T REMEMBER?

18 **A.** I DON'T.

19 **Q.** YOU MAY HAVE STARTED WITH A BLANK ONE?

20 **A.** I DON'T RECALL.

21 **Q.** OKAY. LET'S LOOK AT THE MIDDLE OF THE PAGE.

22 **A.** OKAY.

23 **Q.** AND THERE MR. CURRAN PUT AN X NEXT TO THE BOX UNDER
24 EXERCISING JUDGMENT, SOLVING PROBLEMS, HE GAVE HER THE LOWEST
25 RATING. DO YOU SEE THAT?

1 **A.** YES.

2 **Q.** EXERCISES LITTLE JUDGMENT, SHOWS LITTLE PROBLEM-SOLVING
3 ABILITY?

4 **A.** YES.

5 **Q.** AND THEN YOU GAVE HER A BETTER RATING THAN THAT. YOU PUT
6 AN X NEXT TO JUDGMENT AND PROBLEM SOLVING ABILITY ARE ACCURATE
7 -- I MEAN ADEQUATE.

8 DO YOU SEE THAT?

9 **A.** YES.

10 **Q.** IN THE COMMENTS AND EXAMPLES IN THAT SAME SECTION, YOU
11 CHANGED THAT. THE FIRST SENTENCE IS THE SAME. BUT YOU TOOK
12 OUT WHAT MR. CURRAN HAD TO SAY ABOUT A TANK DRAIN VALVE. AND
13 YOU PUT IN AN INCIDENT THAT YOU REMEMBER WITH CIARA WHERE
14 THERE WAS A LEAK. SHE WAS TIMID IN GIVING YOU A RESPONSE, BUT
15 AFTER YOU TALKED WITH HER, YOU DETERMINED THAT IT WAS NOT A
16 PROCESS KNOWLEDGE ISSUE, JUST A CONFIDENCE ISSUE.

17 YOU PUT THAT IN THERE, RIGHT?

18 **A.** YES.

19 **Q.** OKAY. LOOKS LIKE YOU DIDN'T CHANGE ANYTHING UNDER TEAM
20 WORK, COOPERATION, AND GETTING ALONG. LOOKS LIKE YOU BOTH
21 GAVE HER A SECOND TO HIGHEST RATING.

22 SO LET'S GO DOWN TO THE BOTTOM AND LOOK SPECIFICALLY AT
23 THE BOX THAT IS CALLED ORGANIZING WORK.

24 YOU BOTH CHECKED THE SAME BOX ON THE X, BUT YOU ADDED A
25 COMMENT OR EXAMPLE -- UNDER COMMENT, EXAMPLES. YOU SAID SHE

1 IS BUILDING A ROUTINE. SHE ASKED TO REMAIN IN HP-2 INSTEAD OF
2 GETTING IN -- GOING INTO -- GOING INTO THE TRAINING SLOT AS
3 SHE WANTS TO CONTINUE TO WORK ON THIS?

4 DO YOU SEE THAT?

5 **A.** YES.

6 **Q.** THAT WAS A REFERENCE TO THE CONVERSATION THAT YOU HAD WITH
7 MS. NEWTON WHERE YOU ENCOURAGED HER TO START TRAINING ON HER
8 SECOND JOB.

9 **A.** I WOULDN'T SAY IT THAT WAY. BUT THAT IS IN REFERENCE TO A
10 CONVERSATION WE HAD, YES.

11 **Q.** ALL RIGHT. LET'S LOOK AT THE SECOND PAGE OF BOTH.

12 UNDER JOB INVOLVEMENT, WHICH IS THE FIRST BOX ON THE
13 SECOND PAGE, MR. CURRAN GAVE HER THE SECOND TO LOWEST RATING
14 BUT YOU BUMPED HER UP ALMOST TWO MONTHS LATER. AND IN THE
15 COMMENT BOX THERE ARE ALSO SOME CHANGES, AREN'T THERE?

16 **A.** YES.

17 **Q.** YOU ADDED THAT MS. NEWTON HAD STARTED TRAINING ON THE FLY
18 WHEN SHE HAS TIME ON DYMER SR3RO JOB.

19 WHAT DID THAT MEAN?

20 **A.** IT MEANS TRAINING ON ANOTHER UNIT WHEN SHE HAS TIME.

21 **Q.** AND YOU TOOK OUT THAT SHE WASN'T MAKING ANY SPECIAL EFFORT
22 TO TRACE PIPE OR REVIEW PROCEDURES IN THE FIELD; ISN'T THAT
23 TRUE?

24 **A.** YES.

25 **Q.** OKAY. LOOKS LIKE THE REST OF THE BOXES ARE THE SAME AND

1 IN THE COMMENTS.

2 SO NOW I WANT TO GO BACK -- LOOK AT THE BOX THAT SAYS
3 SUMMARIZE EMPLOYEE'S DEMONSTRATED STRENGTHS.

4 DO YOU SEE THAT?

5 **A.** YES.

6 **Q.** AND THAT'S THE SAME. YOU LEFT IN CIARA IS WILLING TO
7 LEARN AND IS DETERMINED. SHE IS VERY SAFETY MINDED, NOT
8 AFRAID TO BRING UP SAFETY CONCERNS. SHE IS HONEST AND HAS
9 INTEGRITY.

10 YOU DIDN'T CHANGE ANYTHING ABOUT THAT, DID YOU?

11 **A.** NO.

12 **Q.** AND YOU MARKED THE BOX THAT SAID YES, BASED ON YOUR
13 KNOWLEDGE OF THE EMPLOYEE'S PERFORMANCE TO DATE SHOULD THE
14 INDIVIDUAL CONTINUE AS AN EQUILON EMPLOYEE.

15 **A.** I DON'T KNOW IF I MARKED IT OR LEFT THE SAME CHECK THERE.

16 **Q.** IF YOU STARTED WITH SOMETHING THAT WAS BLANK, YOU WOULD
17 HAVE HAD TO CHECK THAT, RIGHT?

18 **A.** YES.

19 **Q.** ALL RIGHT. NOW LET'S LOOK AT ANOTHER PROGRESS REPORT THAT
20 YOU PREPARED FOR MS. NEWTON. IT IS IN YOUR BINDER. IT IS
21 EXHIBIT 65.

22 **MR. LAFAYETTE:** I DON'T HAVE 65.

23 **THE COURT:** MINE --

24 **MS. NUGENT:** SORRY, 61.

25 **THE COURT:** THAT WAS 61.

1 (PAUSE IN THE PROCEEDINGS.)

2 (DISPLAYED ON SCREEN.)

3 **BY MS. NUGENT:**

4 Q. MR. METCALF, YOU DID PREPARE ANOTHER PROGRESS REPORT FOR
5 MS. NEWTON, DIDN'T YOU?

6 A. NO.

7 Q. YOU NEVER PREPARED ONE WHERE YOU CHECKED BOTH THE YES AND
8 THE NO BOXES?

9 A. I EDITED THE ORIGINAL ONE.

10 Q. AND HOW MANY DAYS AFTER THE ONE THAT WE JUST LOOKED AT DID
11 YOU EDIT THE ORIGINAL ONE?

12 A. I DON'T RECALL.

13 Q. IF YOU WILL LOOK ON THE SCREEN, THERE'S AN EMAIL FROM YOU
14 TO MR. PEREZ. DO YOU SEE THAT?

15 A. YEAH.

16 (DISPLAYED ON SCREEN.)

17 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO ADMIT
18 EXHIBIT 65.

19 **THE COURT:** ANY OBJECTION?

20 **MR. LAFAYETTE:** NO.

21 **THE COURT:** 65 IS ADMITTED.

22 (PLAINTIFF'S EXHIBIT 65 RECEIVED IN EVIDENCE)

23 **BY MS. NUGENT:**

24 Q. LET'S TAKE A LOOK AT THE EDITED VERSION AND COMPARE TO --
25 TO WHAT WE JUST SAW. IF YOU LOOK AT THE ACTUAL PROGRESS

REVIEW . . .

THE COURT: DO YOU HAVE A COPY FOR HIM?

MS. NUGENT: I DON'T HAVE A COPY FOR HIM THAT IS NOT
MARKED UP.

THE COURT: DO WE HAVE THE COURT COPY? 65, CAN YOU
HAND IT TO HIM, FRANCES?

(EXHIBIT HANDED TO WITNESS.)

THE WITNESS: THANK YOU.

THE COURT: GO AHEAD.

BY MS. NUGENT:

Q. SO NOW WE HAVE UP 61 ON THE LEFT. THAT'S THE ONE WE JUST LOOKED AT. AND NOW WE ARE LOOKING AT THE PAGE OF 65 THAT BEGINS WITH THE PROGRESS REVIEW.

AND YOU CAN TELL ME WHEN YOU'RE THERE.

A. GO AHEAD.

Q. OKAY. NUMBER 65 ALSO HAS A DATE OF SEPTEMBER 21, DOESN'T IT?

A. YES.

Q. AND IT SAYS THAT YOU HAD SUPERVISED MS. NEWTON FOR 57 DAYS?

A. THAT'S CORRECT.

Q. AND YOU PREPARED THIS PROGRESS REVIEW AFTER ERIC PEREZ TOLD YOU THAT HE WANTED TO MEET WITH YOU TO ALIGN YOUR RATINGS; ISN'T THAT TRUE?

A. YES.

1 **Q.** AND MIKE BECK WAS IN THAT MEETING AS WELL?

2 **A.** YES.

3 **Q.** OKAY. LET'S GO THROUGH WHAT YOU PREPARED AFTER MEETING
4 WITH MR. PEREZ AND MR. BECK.

5 SO, IN THE FIRST PAGE, ALL OF THE ACTUAL X MARKS ARE THE
6 SAME WITH THE EXCEPTION OF EXERCISING JUDGMENT, SOLVING
7 PROBLEMS.

8 AND INSTEAD OF MARKING HER UP UNDER JUDGMENT AND
9 PROBLEM-SOLVING ABILITY ARE ADEQUATE, A COUPLE DAYS LATER YOU
10 MARKED HER DOWN, DIDN'T YOU? EXERCISES LITTLE JUDGMENT, SHOWS
11 LITTLE PROBLEM-SOLVING ABILITY.

12 **A.** YES.

13 **Q.** UNDER SAFETY AND HOUSEKEEPING, YOU TOOK OUT SHE IS DOING
14 BETTER AT PROJECTING AND CONVEYING UNIT INFO -- I AM SORRY.

15 YOU DIDN'T TAKE IT OUT BUT YOU ADDED, I WOULD LIKE TO SEE
16 HER GET MORE INVOLVED WITH SAFETY TOPICS.

17 DO YOU SEE THAT?

18 **A.** YES.

19 **Q.** AND THE NEXT BOX YOU ADDED ANOTHER SENTENCE UNDER WORK
20 SPEED, ACCURACY, AND THOROUGHNESS. BEFORE YOU JUST SAID SHE
21 GETS RIGHT OUT INTO THE UNIT TO START HER READINGS AND
22 SAMPLES, BUT AFTER MEETING MR. PEREZ AND BECK, YOU WROTE, SHE
23 NEEDS TO CONTINUE LEARNING SAMPLE READINGS AND CALL CARDS,
24 WORK ON LEARNING SAMPLE SPECS TO IMPROVE UNIT PERFORMANCE,
25 RIGHT?

1 **A.** YES.

2 **Q.** ALL RIGHT. LET'S LOOK AT WHAT YOU CHANGED FROM YOUR
3 ORIGINAL ONE UNDER EXERCISING JUDGMENT, SOLVING PROBLEMS.

4 YOU TOOK OUT THE LINE ABOUT WITH FURTHER DISCUSSION, I
5 DETERMINED THAT THIS WAS A CONFIDENCE ISSUE AND NOT A PROCESS
6 KNOWLEDGE ISSUE, DIDN'T YOU?

7 **A.** YES.

8 **Q.** AND INSTEAD YOU PUT IN, SHE NEEDS TO SPEND MORE TIME IN
9 THE UNIT TRACING PIPE AND GAINING CONFIDENCE IN THE PLANT?

10 **A.** YES.

11 **Q.** ALL RIGHT. LET'S LOOK AT THE SECOND PAGE.

12 NOW I'M LOOKING UNDER JOB INVOLVEMENT IN THE COMMENT BOX.
13 AND YOU ADDED I WOULD LIKE TO SEE MORE IN THE FIELD TIME,
14 DIDN'T YOU?

15 **A.** YES.

16 **Q.** AND UNDER AMOUNT OF SUPERVISION REQUIRED, YOU CHANGED
17 THOSE COMMENTS AND EXAMPLES TOO, DIDN'T YOU?

18 **A.** I DON'T THINK I CHANGED IT. I ADDED STUFF.

19 **Q.** LET'S LOOK AT THE FIRST SENTENCE THAT WAS ON YOUR ORIGINAL
20 ONE. YOU SAY SHE NEEDS ASSISTANCE WITH MOST TASKS THE FIRST
21 TIME. THEN IN THE SECOND ONE YOU SAID SHE NEEDS ASSISTANCE
22 WITH MOST TASKS?

23 **A.** I DO SEE THAT, YES.

24 **Q.** ALL RIGHT. AND THEN YOU ADDED I WOULD LIKE TO SEE MORE
25 INITIATIVE TO DO SOMETHING ON HER OWN THE FIRST TIME. I SEE

1 HER ASKING PEOPLE TO GO OUT WITH HER BUT I WOULD LIKE TO SEE
2 HER HAVE WENT IN THE FIELD AND LOOKED AT IT HERSELF FIRST AND
3 SEE IF SHE CAN DO IT ON HER OWN.

4 DO YOU SEE THAT?

5 **A.** YES.

6 **Q.** WOULD THAT BE SOMETHING THAT YOU WOULD SAY ABOUT AN
7 EMPLOYEE THAT SHELL THOUGHT WAS A SAFETY RISK, TO GO OUT AND
8 DO THINGS ON HER OWN?

9 **A.** I DON'T QUITE GET THE QUESTION.

10 **Q.** I'LL MOVE ON.

11 YOU ALSO ADDED AN EXPLANATION TOWARDS THE BOTTOM OF THE
12 PAGE. YOU DIDN'T HAVE ANY ON THE ORIGINAL ONE YOU PREPARED,
13 BUT ON THE ONE THAT YOU PREPARED AFTER MEETING WITH MR. PEREZ
14 AND MR. BECK, YOU SAID, I'M NOT SURE CIARA IS READY FOR THIS
15 JOB. SHE NEEDS TO SPEND MORE TIME IN THE FIELD LEARNING THE
16 UNITS AND TRACING THE PIPES AS I HAVE SUGGESTED?

17 **A.** YES.

18 **Q.** YOU THOUGHT SHE SHOULD SPEND MORE TIME IN THE FIELD?

19 **A.** YES.

20 **Q.** AND THEN AFTER MEETING WITH MR. PEREZ AND MR. BECK, YOU
21 CHECKED THE NO BOX AND THE YES BOX.

22 **A.** YES.

23 **Q.** AND IN THAT MEETING --

24 **MS. NUGENT:** YOU CAN TAKE THAT DOWN.

25 **Q.** AND IN THAT MEETING WITH MR. PEREZ AND MR. BECK, THEY TOLD

1 YOU THAT IF THEY WERE GOING TO FIRE MS. NEWTON, YOU COULDN'T
2 HAVE THE YES BOX CHECKED; ISN'T THAT TRUE?

3 **A.** I DON'T RECALL THE SPECIFIC.

4 **Q.** DID THEY SAY THAT TO YOU?

5 **A.** I DON'T RECALL IF THEY DID OR NOT.

6 **Q.** DO YOU RECALL ANYTHING THAT WAS SAID DURING THAT MEETING?

7 **A.** THE SPECIFICS IS HARD TO RECALL.

8 **Q.** OKAY.

9 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO READ FROM
10 THE MR. METCALF'S DEPOSITION AT 216, 11 THROUGH 15.

11 **THE COURT:** GO AHEAD.

12 **MS. NUGENT:** (READING.)

13 "QUESTION: WHAT DO YOU RECALL BEING SAID?

14 "ANSWER: I RECALL -- I DON'T KNOW WHO SAID WHERE BUT
15 THAT I HAD THE YES BOX MARKED THERE AND THAT, IF THEY
16 WERE GOING TO GO WITH TERMINATION, I CANNOT HAVE THAT
17 BOX CHECKED."

18 **BY MS. NUGENT:**

19 **Q.** NOW, THAT WAS THE FIRST TIME YOU UNDERSTOOD MS. NEWTON WAS
20 GOING TO BE TERMINATED, RIGHT?

21 **MR. LAFAYETTE:** I THINK FOR COMPLETENESS IT SHOULD
22 GO, COUNSEL, TO LINE 25.

23 **THE COURT:** NOT YET. ANSWER THE QUESTION.

24 **THE WITNESS:** CAN YOU REPEAT THE QUESTION?

1 **BY MS. NUGENT:**

2 **Q.** THAT WAS THE FIRST TIME THAT YOU HEARD THAT SHELL WAS
3 PLANNING TO FIRE MS. NEWTON, RIGHT?

4 **A.** I BELIEVE SO, YES.

5 **Q.** DID ANYTHING HAPPEN WITH MS. NEWTON BETWEEN THE TIME THAT
6 YOU DRAFTED THE FIRST REPORT AND THE SECOND REPORT THAT WE
7 LOOKED AT?

8 **A.** I DON'T BELIEVE -- I DON'T KNOW. I DON'T RECALL SPECIFIC
9 DATES OF WHEN I DID THE REPORTS.

10 **Q.** BETWEEN THE TIME THAT YOU DID DO THE REPORTS, MS. NEWTON
11 DIDN'T DO ANYTHING TO CHANGE YOUR ASSESSMENT OF HER BEHAVIOR,
12 DID SHE?

13 **A.** I DON'T RECALL, NO.

14 **Q.** CHANGES THAT YOU MADE WERE BASED ON THE FEEDBACK YOU GOT
15 IN THE MEETING WITH MR. BECK AND MR. PEREZ; ISN'T THAT TRUE?

16 **A.** I DON'T KNOW THAT I WOULD CALL IT FEEDBACK.

17 **Q.** THE CHANGES THAT YOU MADE WERE BASED ON WHAT YOU -- WHAT
18 WAS DISCUSSED IN THAT MEETING THOUGH, RIGHT?

19 **A.** IT'S NOT REALLY HOW IT WAS, NO.

20 **MS. NUGENT:** YOUR HONOR, I WOULD LIKE TO READ FROM
21 PAGE 217 OF THE WITNESS'S DEPOSITION FROM FOUR TO SEVEN.

22 **THE COURT:** GO AHEAD.

23 **MS. NUGENT:** (READING)

24 "QUESTION: WERE THOSE CHANGES BASED ON ANY -- WERE
25 THOSE CHANGES BASED ON THE FEEDBACK THAT YOU GOT AT

1 THAT MEETING WITH -- THAT ALIGNMENT MEETING?

2 "ANSWER: YES."

3 **MR. LAFAYETTE:** I THINK FOR COMPLETENESS IT SHOULD GO
4 TO LINE 13.

THE COURT: NO. OVERRULED. GO AHEAD.

6 BY MS. NUGENT:

7 Q. MS. NEWTON IS THE ONLY PERSON THAT HAS DIRECTLY REPORTED
8 TO YOU THAT HAS BEEN FIRED BY SHELL; ISN'T THAT TRUE?

9 | A. YES.

10 MS. NUGENT: I HAVE NOTHING FURTHER.

11 THE COURT: EXAM.

12 MR. LAFAYETTE: YES, YOUR HONOR.

13 **THE COURT:** LIMITED TO THE SCOPE OF THIS EXAM OR ARE
14 YOU ASKING TO GO BEYOND AND DO YOUR OWN DIRECT?

15 **MR. LAFAYETTE:** I'M GOING TO STICK WITHIN THE SCOPE,
16 YOUR HONOR.

CROSS-EXAMINATION

18 || BY MR. LAFAYETTE:

19 Q. GOOD MORNING.

A. GOOD MORNING.

21 || Q. HOW ARE YOU?

22 || A. I 'M GOOD.

23 Q. REVIEWS, ASSESSMENTS. DID YOU GIVE AN ASSESSMENT AFTER
24 MS. NEWTON HAD BEEN WORKING WITH YOU FOR 30 DAYS?

25 | Page

Q. WHY DIDN'T YOU DO AN ASSESSMENT AT THE 30-DAY MARK?

A. BECAUSE I DIDN'T FEEL THAT THE TIME THAT I HAD SPENT WITH HER WAS ENOUGH TO GIVE A REVIEW.

Q. SO AN ASSESSMENT AT THAT POINT WOULD HAVE BEEN AT WHAT POINT IN TIME?

A. I DIDN'T HEAR YOU.

Q. THE ASSESSMENT AT THE 30-DAY MARK WOULD HAVE BEEN AT WHAT POINT IN TIME?

A. 240 DAYS.

Q. 240 DAYS.

A. YES.

Q. ALL RIGHT. NOW, YOU'VE BEEN SHOWN EXHIBIT 61.

A. YES.

Q. I'M GOING TO PUT IT ON THE SCREEN.

(PAUSE IN THE PROCEEDINGS.)

THIS DOCUMENT.

(DISPLAYED ON SCREEN.)

YOU WERE JUST ASKED SOME QUESTIONS ABOUT THIS DOCUMENT
EXHIBIT 61. DO YOU SEE IT THERE?

A. YES.

Q. DID YOU SIGN THIS DOCUMENT?

A. NO.

Q. WHAT IS YOUR PRACTICE WHEN YOU PREPARE AN ASSESSMENT?

A. YOU PREPARE THE ASSESSMENT AND THEN SEND IT TO THE

PRODUCTION SUPERVISOR TO REVIEW.

1 **Q.** YOU SEND IT TO THE PRODUCTION SUPERVISOR TO REVIEW. WHO
2 IS THE PRODUCTION SUPERVISOR?

3 **A.** ERIC PEREZ.

4 **Q.** SO WAS THAT YOUR STANDARD PRACTICE?

5 **A.** YES.

6 **Q.** OKAY. AND SO NOW, DID YOU EVER GIVE A COPY OF THIS
7 DOCUMENT TO MS. NEWTON, EXHIBIT 61?

8 **A.** NO.

9 **Q.** DID YOU EVER SIT DOWN WITH MS. NEWTON AND EXHIBIT 61 AND
10 TELL HER ANYTHING ABOUT IT?

11 **A.** NO.

12 **Q.** DID YOU EVER GIVE MS. NEWTON A 240 ASSESSMENT -- 240-DAY
13 ASSESSMENT?

14 **A.** NO.

15 **Q.** DID YOU EVER GIVE HER A 270-DAY ASSESSMENT?

16 **A.** NO.

17 **Q.** DID YOU EVER GIVE HER A DOCUMENT RELATING TO ANY
18 ASSESSMENT AT ALL EVER?

19 **A.** NO.

20 **Q.** THIS DOCUMENT EXHIBIT 61, WHAT DID YOU DO WITH IT AFTER
21 YOU PREPARED IT?

22 **A.** I EMAILED IT TO ERIC PEREZ.

23 **Q.** AND THE REASON YOU DID THAT WAS WHAT?

24 **A.** FOR HIM TO REVIEW IT.

25 **Q.** AND THEN WHAT DID YOU EXPECT HIM TO DO WITH IT AFTER YOU

1 SENT IT TO HIM?

2 **A.** HE'LL REVIEW THEM. IF THERE IS ANY ISSUES, THEN WE WILL
3 GET TOGETHER TO ALIGN ON IT IF HE HAS ANY ISSUES WITH IT. IF
4 NOT, HE WILL SEND THEM BACK AND THEN WE PRESENT THEM TO THE
5 EMPLOYEE.

6 **Q.** WAS THAT JUST FOR MS. NEWTON?

7 **A.** THAT IS FOR EVERY ONE THAT I DO.

8 **Q.** AND WAS THAT JUST STARTING IN SEPTEMBER OF 2016?

9 **A.** NO. THAT IS THE WAY WE HAVE ALWAYS DONE THEM.

10 **Q.** DO YOU HAVE ANY IDEA AS TO HOW MS. NEWTON GOT THIS
11 DOCUMENT?

12 **A.** NO.

13 **Q.** SO NOW, AT SOME POINT IN TIME, YOU RECEIVED A DOCUMENT
14 FROM MR. METCALF -- FROM MR. PEREZ INVITING YOU TO COMMENT ON
15 -- TO START PREPARING ASSESSMENTS FOR INDIVIDUALS, IS THAT
16 ACCURATE?

17 **A.** YES.

18 **MR. LAFAYETTE:** YOUR HONOR, I THINK EXHIBIT 580 IS IN
19 EVIDENCE AND I'M CONFIRMING BEFORE I DISPLAY IT.

20 **THE COURT:** 580 IS NOT IN EVIDENCE.

21 **MR. LAFAYETTE:** OKAY.

22 CAN I SHOW IT TO THE WITNESS ON THE SCREEN WITHOUT IT
23 BEING DISPLAYED TO THE JURY?

24 **THE COURT:** YOU CAN.

25 **THE CLERK:** HANG ON.

1 (DISPLAYED ON SCREEN.)

2 **THE COURT:** ISN'T THIS THE SAME THING I'VE ALREADY
3 BEEN GIVEN? YEAH, I HAVE THIS ONE.

4 **BY MR. LAFAYETTE:**

5 **Q.** DO YOU SEE EXHIBIT 580 IN THE BINDER I JUST HANDED TO YOU?

6 **A.** YES.

7 **Q.** DOWN BELOW, THERE IS A FIRST EMAIL DATED SEPTEMBER 8,
8 2016. DO YOU SEE THAT?

9 **A.** YES.

10 **Q.** ARE YOU LISTED AS A RECIPIENT OF THAT EMAIL?

11 **A.** YES.

12 **Q.** AND DO YOU HAVE AN UNDERSTANDING AS TO WHAT WAS BEING
13 REQUESTED OF YOU IN THAT PARTICULAR EMAIL?

14 **A.** YES.

15 **Q.** WHAT WAS IT?

16 **A.** TO REVIEW THE NEW HIRES BECAUSE THE PROBATIONARY PERIOD
17 WAS COMING DUE.

18 **Q.** AND WERE YOU ASKED TO RANK THEM OR RATE THEM ON A SCALE?

19 **A.** YES.

20 **Q.** AND WHAT WAS THE SCALE THAT YOU WERE SUPPOSED TO RATE THEM
21 ON?

22 **A.** ONE THROUGH FIVE.

23 **Q.** AND DID YOU HAVE AN UNDERSTANDING AS WHAT TO ITEMS YOU
24 WERE SUPPOSED TO RATE THEM ON?

A. YES.

Q. WHAT WAS THAT?

A. PERMITTING, ATTITUDE, BEHAVIOR, ENERGIZING, ISOLATING, WORK ETHIC; AND WITH EVERYTHING YOU KNOW TODAY, WOULD YOU LIKELY -- LIKELY WOULD YOU HIRE THEM TODAY? ONE IS NO, FIVE IS YES.

Q. ALL RIGHT. IN THAT BINDER DO YOU SEE SOMETHING MARKED EXHIBIT 593?

A. YES.

Q. AND IS THAT AT THE BOTTOM AN EMAIL THAT YOU SENT ON SEPTEMBER 21, 2016?

A. YES.

Q. AND AT THE TOP IS THERE AN EMAIL FROM MR. PEREZ TO YOU THAT IS DATED SEPTEMBER 21, 2016?

A. YES.

Q. DO YOU RECALL GETTING AND SENDING THESE TWO EMAILS?

A. YES.

MR. LAFAYETTE: YOUR HONOR, I WOULD LIKE TO MOVE THIS DOCUMENT INTO EVIDENCE.

MS . NUGENT : NO OBJECTION .

THE COURT: ALL RIGHT. SO 593 IS ADMITTED.

(DEFENDANT'S EXHIBIT 593 RECEIVED IN EVIDENCE)

(DISPLAYED ON SCREEN.)

(DISPLAYED ON SCREEN.)

THE CLERK: EIGHT --

THE COURT: 593.

1 **THE CLERK:** OKAY.

2 **BY MR. LAFAYETTE:**

3 **Q.** IN YOUR EMAIL AT THE BOTTOM OF THE PAGE, WHAT WERE YOU
4 DOING?

5 **A.** I WAS EMAILING MR. PEREZ THE ASSESSMENT OF MS. NEWTON.

6 **Q.** AS OF THIS MOMENT HAD YOU PROVIDED MS. NEWTON WITH THIS
7 DOCUMENT?

8 **A.** NO.

9 **Q.** AT THE TOP OF THE PAGE IS THAT THE RESPONSE THAT YOU GOT
10 BACK FROM MR. PEREZ?

11 **A.** YES.

12 **Q.** SO FIRST, THERE'S SOMETHING HERE WHERE HE WRITES:
13 RICHARD, BEFORE YOU ISSUE, LET'S ALIGN ON CIARA 240 REVIEW.
14 DO YOU SEE THAT?

15 **A.** YES.

16 **Q.** I PASTED YOUR RESPONSE BELOW ON HER RATING. DO YOU SEE
17 THAT?

18 **A.** YES.

19 **Q.** THERE WHERE IT SAYS PERMITTING ONE TO FIVE. AND THERE'S A
20 PARENTHESIS TWO. WAS THAT YOUR RATING?

21 **A.** YES.

22 **Q.** AND WHERE IT SAYS ISOLATING, ONE TO FIVE, PARENTHESIS TWO,
23 WAS THE TWO YOUR RATING?

24 **A.** YES.

25 **Q.** AND THEN WHERE IT SAYS EVERYTHING YOU KNOW TODAY, HOW

1 LIKELY WOULD YOU HIRE THEM TODAY, ONE THROUGH FIVE, ONE NO AND
2 FIVE IS A YES. WAS YOUR RATING A TWO?

3 **A.** YES.

4 **Q.** WHEN YOU SAT DOWN WITH MR. PEREZ AND MR. BECK, DID YOU
5 HAVE A DISCUSSION ABOUT ALIGNING YOUR RATING WITH THE PROPOSED
6 ASSESSMENT?

7 **A.** YES.

8 **Q.** NOW, MR. PEREZ SAYS HERE, I SET UP A MEETING NOTICE FOR
9 ME, YOU, AND MIKE TO DISCUSS AFTER THE MONDAY MORNING MEETING.
10 DO YOU SEE THAT?

11 **A.** YES.

12 **Q.** HIS EMAIL WAS SENT ON A WEDNESDAY, WASN'T IT? TAKE A LOOK
13 AT THE TOP.?

14 **A.** YES.

15 **Q.** THAT MEANS YOU WERE GOING TO MEET THE NEXT WEEK, RIGHT?

16 **A.** THAT'S CORRECT.

17 **Q.** SO NOW BETWEEN THE TIME OF THAT MEETING -- WHAT I WOULD
18 NOW LIKE YOU TO TAKE A LOOK AT EXHIBIT 600. IS EXHIBIT 600 AN
19 EMAIL YOU SENT TO MR. PEREZ ON FRIDAY, SEPTEMBER 23?

20 **A.** YES.

21 **Q.** AND DID YOU ATTACH SOMETHING TO THAT EMAIL?

22 **A.** YES.

23 **MR. LAFAYETTE:** YOUR HONOR, I WOULD LIKE TO MOVE THIS
24 DOCUMENT INTO EVIDENCE.

25 **MS. NUGENT:** NO OBJECTION.

1 **THE COURT:** ADMITTED.

2 (DEFENDANT'S EXHIBIT 600 RECEIVED IN EVIDENCE)

3 **BY MR. LAFAYETTE:**

4 **Q.** WHAT IS THE THING THAT YOU ATTACHED TO THE EMAIL?

5 **A.** IT WAS A -- MY REVIEW SPREADSHEET.

6 **Q.** YOUR REVIEW SPREADSHEET?

7 **A.** YES.

8 **Q.** WHAT IS THAT?

9 **A.** THAT'S WHERE I DOCUMENT THINGS FOR MEMORY.

10 **Q.** LET ME TURN TO THE SECOND PAGE OF THIS EXHIBIT.

11 (DISPLAYED ON SCREEN.)

12 8/30/2016. WHAT IS THIS?

13 **A.** IT'S MY WRITEUP AFTER A CONVERSATION WITH MIKE.

14 **Q.** MIKE WHO?

15 **A.** MIKE CUTSHAW.

16 **Q.** WHO'S MIKE CUTSHAW?

17 **A.** HE IS AN OPERATOR IN NORTH SIDE OF OPCEN.

18 **Q.** WHEN WAS THIS PARTICULAR PASSAGE OF THIS DOCUMENT CREATED?

19 **A.** ON THE DATE STATED, 8/30/2016 AT 1600 HOURS.

20 **Q.** WAS THIS A COMMENT ABOUT MS. NEWTON?

21 **A.** IT WAS AN OBSERVATION FROM MIKE, A CONCERN OF HIS.

22 **Q.** WHAT WAS THE -- WHAT WAS YOUR UNDERSTANDING AS TO WHAT HE
23 REPORTED TO YOU?

24 **A.** THAT A PERMIT WAS WRITTEN ON -- A PERMIT FOR PEOPLE TO
25 PERFORM WORK WAS WRITTEN ON A PIECE OF EQUIPMENT, J-207

1 RECYCLED COMPRESSOR, IN HP-2 TO PERFORM HOT WORK AND REPAIR
2 BLINDS.

3 **Q.** WAS THERE A PROBLEM WITH THE PERFORMANCE OF MS. NEWTON
4 HERE?

5 **A.** ABSOLUTELY.

6 **Q.** CAN YOU EXPLAIN THE NATURE OF THE PROBLEM WITH HER
7 PERFORMANCE?

8 **A.** IF MIKE HAD NOT BEEN THERE TO INTERVENE AND THIS PERMIT
9 HAD ACTUALLY BEEN ISSUED, THE PIECE OF EQUIPMENT WAS NOT
10 PREPPED, HE'D HAD A RELEASED ATMOSPHERE, FRESH AIR WAS
11 REQUIRED FOR THE JOB BUT IT WASN'T ON THE PERMIT. SO HE
12 POSSIBLY COULD HAVE HAD DEATHS, EXPLOSIONS, AND CATASTROPHIC
13 EVENTS.

14 **Q.** WAS THAT OF CONCERN TO YOU?

15 **A.** ABSOLUTELY.

16 **Q.** WAS THAT -- DID THIS EVENT FACTOR INTO THE ASSESSMENT THAT
17 YOU PROVIDED TO MR. PEREZ?

18 **A.** YES.

19 **Q.** NOW, SECOND PART OF THIS DOCUMENT CONTAINS SOMETHING ELSE.
20 PLAINTIFF'S COUNSEL ASKED YOU IF SOMETHING HAD TAKEN PLACE
21 BETWEEN THE DATE THAT YOU SENT THE EMAIL TO MR. PEREZ ON
22 THE 21ST AND THE DATE THAT YOU MET WITH MR. PEREZ AND
23 MR. BECK.

24 DO YOU REMEMBER THAT QUESTION?

25 **A.** YES, I DO.

1 **Q.** WAS THERE SOMETHING ELSE THAT HAD TRANSPired?

2 **A.** AFTER SEEING THIS, YES, THERE WAS.

3 **Q.** WHAT WAS THE -- WHEN DID THIS OTHER THING TRANSPire?

4 **A.** 9/22 AT 2300 HOURS.

5 **Q.** AND WHAT WAS IT THAT HAD TRANSPired?

6 **A.** MIKE CAME -- MIKE CUTSHAW AGAIN CAME TO ME WITH A
7 CONCERN -- HE WAS THE BOARD OPERATOR THAT DAY -- WITH SAMPLE
8 RESULTS THAT CIARA WAS TURNING IN. HE HAD HAD MULTIPLE
9 CONVERSATIONS WITH HER ABOUT THE RESULTS AND THE SPECS THAT
10 ARE ON THE SHEET.

11 **MS. NUGENT:** OBJECTION, HEARSAY.

12 **MR. LAFAYETTE:** IT IS HIS UNDERSTANDING. GOES TO HIS
13 STATE OF MIND.

14 **THE COURT:** OVERRULED. BUT YOU SHOULDN'T BE READING.
15 DO NOT READ. YOU CAN ANSWER HIS QUESTION.

16 **THE WITNESS:** OKAY.

17 **BY MR. LAFAYETTE:**

18 **Q.** WHAT -- WHAT IS THE PROBLEM WITH WHAT HE WAS REPORTING TO
19 YOU?

20 **A.** THAT HE HAD MULTIPLE -- ON MULTIPLE OCCASIONS GONE OVER A
21 SAMPLE SHEET AND WHAT MOVES TO MAKE IF A SAMPLE WAS OFF SPEC.

22 **Q.** WHAT DIFFERENCE DOES IT MAKE IF IT IS OFF SPEC?

23 **A.** WE LIVE AND DIE BY SPECS. IF IT'S NOT ON SPEC, THEN
24 YOU'RE NOT MAKING PROPER PRODUCT. YOU CAN GET CORROSION
25 ISSUES. THERE IS A WHOLE BUNCH OF THINGS THAT CAN GO WITH

1 THAT. WITH CORROSION ISSUES CAN COME LEAKS. AGAIN,
2 CATASTROPHIC EVENTS CAN HAPPEN.

3 Q. YOU SENT THIS TO MR. PEREZ BEFORE YOU MET WITH HIM ON THE
4 26TH?

5 A. YES.

6 Q. I WOULD LIKE FOR YOU TO TAKE A LOOK AT EXHIBIT 601. THIS
7 IS AN EMAIL THAT IS DATED SEPTEMBER 27, 2016.

8 DO YOU SEE THAT DOCUMENT?

9 A. YES.

10 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
11 INTO EVIDENCE, YOUR HONOR.

12 **THE COURT:** ANY OBJECTION?

13 **MS. NUGENT:** NO OBJECTION.

14 **THE COURT:** 601 IS ADMITTED.

15 (DEFENDANT'S EXHIBIT 601 RECEIVED IN EVIDENCE)

16 (DISPLAYED ON SCREEN.)

17 **BY MR. LAFAYETTE:**

18 Q. NOW, IS THIS A DOCUMENT -- AN EMAIL YOU SENT AFTER YOU MET
19 WITH MR. PEREZ AND MR. BECK?

20 A. YES.

21 Q. IS THIS A DOCUMENT THAT YOU PREPARED AFTER YOU LOOKED AT
22 THE -- AT YOUR LOG RELATING TO THE EVENTS ON AUGUST 30 AND
23 SEPTEMBER 22?

24 A. YES.

25 Q. AFTER THE CONVERSATION WITH MR. BECK AND MR. PEREZ, AND

AFTER YOU LOOKED AT YOUR EVENT LOG FOR AUGUST 30 AND
SEPTEMBER 22, DID YOU MAKE ANY ADJUSTMENTS TO THE DRAFT 240
THAT YOU HAD -- ASSESSMENT THAT YOU HAD BEEN WORKING ON?

A. YES.

Q. DOES THE DRAFT 240 REFLECT THE THINGS THAT YOU -- THAT WE HAVE JUST TALKED ABOUT? DOES THE FINAL 240 ADDRESS THE THINGS WE JUST TALKED ABOUT?

A. THAT IS CORRECT.

Q. NOW, IS THERE ANY PARTICULAR -- AS OF AUGUST 30, WHEN THE
240 WAS DUE, HOW MANY SHIFTS DO YOU THINK YOU WORKED WITH HER?

A. I DON'T KNOW. THERE ARE 14 IN A MONTH, SO ROUGHLY 14.

Q. HAD YOU HAD A LONG SHIFT -- A LONG CHANGE IN AUGUST, TOO?

A. YES.

Q. SO IS THERE -- SO LET'S TAKE A LOOK AT THE DOCUMENT NOW
THAT WE HAVE, WHICH IS EXHIBIT 2601 (SIC). NOW, THIS IS THE
240 THAT YOU HAD BEEN WORKING ON BEFORE?

THE COURT: EXHIBIT 2601 OR 601?

MR. LAFAYETTE: 601, YOUR HONOR.

THE COURT: GO AHEAD.

BY MR. LAFAYETTE:

Q. DO YOU SEE IT ON THE SCREEN?

(DISPLAYED ON SCREEN.)

A. YES.

Q. IT HAS COLOR ON IT, DOESN'T IT?

A. YES.

1 **Q.** IS THAT THE WAY IT NORMALLY LOOKS WHEN YOU WORK ON IT?

2 **A.** YES.

3 **Q.** OKAY. AND SO THIS DOCUMENT IS THE ONE THAT YOU HAD
4 PROPOSED TO GIVE TO MS. NEWTON, RIGHT?

5 **A.** THAT IS CORRECT.

6 **Q.** NOW, IN THIS DOCUMENT HERE, THERE IS A BOX DOWN HERE,
7 WHERE YOU CHECKED BOTH BOXES?

8 **A.** YES.

9 **Q.** DID MR. PEREZ MAKE YOU DO THAT?

10 **MS. NUGENT:** OBJECTION, LEADING.

11 **THE COURT:** SUSTAINED.

12 **BY MR. LAFAYETTE:**

13 **Q.** DID ANYONE MAKE YOU DO THAT?

14 **A.** NO.

15 **Q.** COULD ANYONE HAVE EVER MADE YOU DO SOMETHING THAT YOU
16 DIDN'T WANT TO DO?

17 **A.** NO.

18 **Q.** HAVE YOU EVER PUSHED BACK --

19 **THE COURT:** SUSTAINED. THERE'S A LOT OF LEADING.
20 SUSTAINED.

21 **BY MR. LAFAYETTE:**

22 **Q.** HAVE YOU EVER PUSHED BACK ON MR. PEREZ?

23 **A.** YES.

24 **Q.** WHY DID YOU PICK BOTH BOXES?

25 **A.** BECAUSE IN THE TIME FRAME THAT I HAD TO EVALUATE -- THIS

1 IS A FINAL REVIEW WHICH TAKES IN THE WHOLE BIG PICTURE AND
2 WITH ONLY HAVING HAD THE LIMITED NUMBER SHIFTS THAT I HAD WITH
3 MS. NEWTON BECAUSE I WAS OFF ON TURNAROUND, I DIDN'T FEEL
4 QUALIFIED TO ANSWER THAT QUESTION.

5 Q. WHY WAS THAT BOX CHECKED ON EXHIBIT 61 AS A NO -- AS A YES
6 ONLY?

7 A. IT COULD HAVE BEEN THERE FROM BEFORE IF IT WAS A COPIED
8 PAPER. I DON'T HAVE AN EXACT ANSWER TO THAT. I DON'T KNOW IF
9 I CHECKED IT OR IF IT WAS ALREADY THERE.

10 Q. WAS THIS DOCUMENT EVER GIVEN TO MS. NEWTON?

11 A. NO.

12 Q. IF IT HAD BEEN GIVEN TO MS. NEWTON, WOULD THERE BE
13 SOMETHING ON THIS DOCUMENT REFLECTING THAT?

14 A. YES.

15 Q. WHAT WOULD BE THERE?

16 A. MY SIGNATURE AND HERS.

17 Q. THERE WAS SOMETHING ABOUT A MEETING, A SAFETY MEETING --

18 A. YES.

19 Q. -- THAT YOU WERE ASKED ABOUT?

20 A. YES.

21 Q. OKAY. CAN YOU TELL US WHAT HAPPENED TO CAUSE YOU TO RAISE
22 THE CONVERSATION THAT WAS RAISE IN THE SAFETY MEETING?

23 A. THE NIGHT PRIOR MY WIFE AND I WERE LAYING IN BED AND THERE
24 WAS A REPORT ON THE NEWS OF A FIRE IN A HOUSE WHERE SOME
25 PEOPLE PERISHED. WE HAD TWO KIDS AT THE TIME AND WE LIVE IN A

1 TWO-STORY HOUSE. SO WE WERE HAVING THE CONVERSATION OF WHAT
2 WE WOULD DO IF THERE WAS A FIRE IN OUR HOUSE AND DID WE HAVE
3 LADDERS TO GET OUT OF THE SECOND STORY AND WHAT WE WOULD GO
4 THROUGH. AND HAVING THAT CONVERSATION KIND OF OPENED MY EYES.
5 WE DIDN'T HAVE LADDERS. WE DIDN'T HAVE A PLAN IN PLACE IF
6 SOMETHING WAS TO GO OFF AND WE COULD HAVE BEEN THEM.

7 **Q.** AND SO WHAT DID THAT HAVE TO DO WITH WORK?

8 **A.** SO I THOUGHT IT WAS A GREAT STORY TO -- A SAFETY TOPIC TO
9 BRING BACK TO WORK BECAUSE IN THAT, WE -- MY WIFE AND I
10 DEVELOPED A TRAINING PLAN SO WE WILL DO DRILLS SOMETIMES OF
11 MIDDLE OF THE NIGHT, WAKE UP, WHAT WE ARE WE GOING TO DO NOW.
12 WE HAVE TWO TODDLERS NOW ALSO, SO -- AND COORDINATE WHO IS
13 GETTING THE TODDLERS AND WHERE WE ARE GOING AND WHAT IF THE
14 FIRE IS HERE AND WHAT IF THE FIRE IS THERE, TYPE OF THING.

15 LIKE WE DO AT WORK WITH RED-TAG DRILLS. IT IS BASICALLY A
16 RED-TAG DRILL AT HOME IN YOUR HOUSE. OR AN EARTHQUAKE OR
17 WHATEVER IT COULD BE. AND I THOUGHT THAT WOULD BE A GOOD
18 THING TO PASS ON TO THE TEAM TO TAKE HOME TO THEIR FAMILIES
19 ALSO.

20 **Q.** WHEN YOU CAME IN THE NEXT DAY, WHAT DID YOU SAY TO THE
21 PEOPLE WHO WERE THERE?

22 **A.** A NORMAL MEETING STARTS OUT WITH A SAFETY TOPIC. I ASKED
23 ANYBODY IF THEY HAD ONE. NO ONE DID. THIS WAS MY OPPORTUNITY
24 TO PRESENT THAT SAFETY TOPIC TO MAKE SURE IS THAT EVERYBODY AT
25 WORK IS TAKING THE SAFETY CULTURE AT WORK HOME WITH THEM,

1 RIGHT? SO YOU ARE TRAINING AND RESPONSES TO AN EMERGENCIES
2 ARE EVERYTHING. RIGHT? IF -- THE WORST THING ONE CAN DO IS
3 AN EMERGENCY IS TO PANIC. AND IF SOMEONE WERE TO PANIC, WHAT
4 ARE YOU GOING TO DO WITH THAT AND HOW ARE YOU GOING TO KEEP
5 THEM FROM PANICKING IS BY REHEARSING THOSE, RIGHT?

6 SO THAT'S WHAT WE TALKED ABOUT.

7 **Q.** ALL RIGHT. NOW, WHEN YOU BROUGHT THIS TOPIC UP, WERE YOU
8 TRYING TO DISPARAGE WOMEN?

9 **A.** ABSOLUTELY NOT.

10 **Q.** WERE YOU TRYING TO DISPARAGE WIVES?

11 **A.** ABSOLUTELY NOT.

12 **Q.** WERE YOU TRYING TO MINIMIZE WOMEN?

13 **A.** ABSOLUTELY NOT.

14 **MS. NUGENT:** OBJECTION, LEADING.

15 **THE COURT:** SUSTAINED.

16 **BY MR. LAFAYETTE:**

17 **Q.** WERE YOU DOING ANYTHING -- I'M NOT TRYING TO SUGGEST AN
18 ANSWER TO YOU I'M SIMPLY CALLING THE QUESTION TO YOU.

19 WERE YOU --

20 **THE COURT:** WHY DON'T YOU ASK HIM WHAT HIS POINT WAS
21 THEN? THAT'S WHY I SUSTAINED THE LEADING OBJECTION.

22 **BY MR. LAFAYETTE:**

23 **Q.** HAVE YOU TOLD ME EVERYTHING AS TO WHY YOU RAISED THIS
24 SUBJECT?

25 **A.** I DON'T KNOW.

1 **Q.** OKAY. TO THE EXTENT THAT -- IN THIS MEETING DID YOU
2 MENTION YOUR WIFE?

3 **A.** YES.

4 **Q.** AND WHAT DID YOU SAY WITH REGARD TO YOUR OWN WIFE?

5 **A.** THAT I WOULD HOPE THAT IN A SITUATION LIKE THAT SHE
6 WOULDN'T PANIC. AND THAT BY DOING THESE TRAINING AND THESE
7 DRILLS, IT WILL PROPERLY PUT HER IN A POSITION TO WHERE SHE
8 WOULDN'T PANIC IF THAT HAPPENED AND I WASN'T THERE AND SHE WAS
9 BY HERSELF.

10 **Q.** ALL RIGHT.

11 **A.** I WANTED HER TO BE ABLE TO TAKE CONTROL OF THE SITUATION,
12 AND DIRECT THE KIDS AS NEEDED.

13 **Q.** ARE YOU MARRIED -- YOU ARE MARRIED?

14 **A.** YES, SIR.

15 **Q.** HOW MANY KIDS DO YOU HAVE?

16 **A.** FOUR.

17 **Q.** AND BOYS? GIRLS?

18 **A.** ONE DAUGHTER AND THREE SONS.

19 **Q.** HOW OLD IS YOUR DAUGHTER?

20 **A.** 16.

21 **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

22 **THE COURT:** ANY REDIRECT?

23 **MS. NUGENT:** I JUST HAVE A FEW, YOUR HONOR.

24 **MR. LAFAYETTE:** I AM SORRY. I HAD ONE MORE QUESTION
25 I FORGOT.

1 **THE COURT:** ALL RIGHT.

2 **BY MR. LAFAYETTE:**

3 **Q.** I'M GOING TO SHOW YOU A DOCUMENT.

4 **MR. LAFAYETTE:** YOUR HONOR, MAY I APPROACH THE
5 WITNESS?

6 **THE COURT:** HAVE YOU GIVEN AS I'VE INSTRUCTED?

7 **MR. LAFAYETTE:** YES.

8 **MS. NUGENT:** WE HAVE SEEN IT, YOUR HONOR.

9 **THE COURT:** GO AHEAD.

10 (EXHIBIT HANDED TO WITNESS.)

11 **BY MR. LAFAYETTE:**

12 **Q.** DO YOU HAVE THE DOCUMENT IN FRONT OF YOU HERE?

13 **A.** YES.

14 **Q.** DO YOU KNOW WHAT THIS IS?

15 **A.** YES.

16 **THE CLERK:** IT WILL TAKE A SECOND.

17 **MR. LAFAYETTE:** CAN I MOVE IT INTO EVIDENCE, YOUR
18 HONOR?

19 **THE COURT:** I'LL LET YOU SHOW IT. I HAVEN'T DECIDED
20 IF I AM GOING TO LET IT IN.

21 **MR. LAFAYETTE:** THANK YOU.

22 (DISPLAYED ON SCREEN.)

23 **BY MR. LAFAYETTE:**

24 **Q.** DO YOU RECOGNIZE THIS DOCUMENT?

25 **A.** YES.

1 **Q.** WHERE DID YOU GET IT FROM?

2 **A.** I WAS TAGGED IN A FACEBOOK POST THAT SOMEBODY POSTED OF
3 IT.

4 **Q.** AND WHEN DID YOU MOST RECENTLY REALIZE IT WAS THERE?

5 **A.** IT POPPED UP IN A ONE-YEAR REVIEW IN SEPTEMBER.

6 **Q.** AND WHAT IS THIS A PHOTOGRAPH OF?

7 **A.** IT'S OUR TEAM BUILDING EVENT AT THE GIANTS GAME.

8 **Q.** WHAT IS A TEAM BUILDING?

9 **A.** IT IS WHERE WE GET TOGETHER AS A TEAM AND KIND OF DO
10 SOMETHING OUTSIDE OF WORK TO BUILD RELATIONSHIPS AND HAVE A
11 GOOD TIME. IT IS A REWARD THAT THE COMPANY PAYS FOR. ALLOWS
12 US TO GO OUT AND SPEND SOME TIME AFTER WORK. WE ARE LIKE A
13 SECOND FAMILY BUT WE ARE ALWAYS WORKING. WE ARE AT WORK MORE
14 THAN WE ARE AT HOME MOST OF THE TIME. SO IT ALLOWS US TO GO
15 OUT AND DO SOMETHING AWAY FROM WORK TOGETHER.

16 **Q.** SO THIS GUY UP FRONT, WHO IS THAT?

17 **A.** IN THE VERY FRONT?

18 **Q.** RIGHT THERE?

19 **A.** THAT'S DAN SCHMIT (PHONETIC).

20 **Q.** THAT'S DAN SCHMIT. OKAY. IS HE ON YOUR CREW?

21 **A.** HE WAS AT THE TIME.

22 **Q.** WHO IS THAT NEXT (INDICATING)?

23 **A.** DAVE SARDANGA (PHONETIC).

24 **Q.** THERE IS SOMEBODY HERE WITH A HAT WITH BEHIND A BIG K.

25 WHO IS THAT?

1 **A.** DEANNA MARTINEZ.

2 **Q.** THIS PERSON NEXT TO HER?

3 **A.** CHAD LONG.

4 **Q.** IS THIS MS. NEWTON?

5 **A.** YES.

6 **Q.** AND WHO'S THIS BACK HERE HOLDING THE FIRST K?

7 **A.** MIKE CUTSHAW.

8 **Q.** AND THE GUY BEHIND THIS PERSON BEHIND MS. NEWTON?

9 **A.** MARCO DEMACURO (PHONETIC).

10 **Q.** THE GUY UP ABOVE HIM?

11 **A.** MYSELF.

12 **Q.** THAT'S YOU?

13 **A.** YES.

14 **Q.** AND WHO IS THAT RIGHT THERE (INDICATING)?

15 **A.** JOHN HESS.

16 **Q.** AND WHO IS THIS RIGHT HERE (INDICATING)?

17 **A.** WILLIAM WESSELMAN.

18 **Q.** AND THERE IS THIS BIG ORANGE FIST. WHAT IS THAT?

19 **A.** YOUR HAND SLIDES INTO IT AND IT HOLDS A BEER OR WHATEVER
20 BEVERAGES YOU ARE DRINKING AT A TIME.

21 **Q.** IS THAT MS. NEWTON'S HAND POINTING TO IT?

22 **A.** YES.

23 **Q.** DID -- AS FAR AS YOU CAN TELL, DID EVERYBODY HAVE A GOOD
24 TIME THAT DAY?

25 **A.** AS FAR AS I KNOW, YEAH.

1 **Q.** DO YOU RECALL WHEN APPROXIMATELY THIS WAS -- WAS THIS IN
2 SEPTEMBER OF 2016?

3 **A.** YES.

4 **MR. LAFAYETTE:** NOW I HAVE NO FURTHER QUESTIONS, YOUR
5 HONOR.

6 **THE COURT:** RE-EXAM.

7 REDIRECT EXAMINATION

8 **BY MS. NUGENT:**

9 **Q.** OKAY. YOU WERE ASKED ABOUT AN EXHIBIT 600 CALLED MY
10 REVIEWS?

11 **A.** YES.

12 **Q.** YOU WRITE TO MR. PEREZ TWO DAYS AFTER YOU SEND HIM THE
13 INITIAL DRAFT OF YOUR PROGRESS -- OF MS. NEWTON'S PROGRESS
14 REPORT THAT YOU WERE SENDING AN UPDATE ON ISSUES WITH CIARA'S
15 AND TWO NIGHTS EVENT. DO YOU SEE THAT?

16 **A.** YES.

17 **Q.** THE FIRST EVENT IS DATED AUGUSTS 30TH, 2016, ALMOST A
18 MONTH BEFORE THAT, RIGHT?

19 **A.** YES.

20 **Q.** SO YOU HAD THAT EVENT WHEN YOU CREATED YOUR INITIAL DRAFT
21 OF MS. NEWTON'S PROGRESS REPORT, DIDN'T YOU?

22 **A.** THAT'S CORRECT.

23 **Q.** ALL RIGHT. LET'S LOOK AT WHAT YOU PUT ON HERE FOR
24 SEPTEMBER 22ND.

25 YOU NEVER ASKED CIARA ABOUT HER PERSPECTIVE ON THAT

1 SITUATION, DID YOU?

2 **A.** NO.

3 **Q.** AND YOU KNEW THAT MIKE CUTSHAW DID NOT FEEL COMFORTABLE
4 PUTTING HIS NAME ON THAT REPORT, DIDN'T YOU?

5 **A.** I DON'T RECALL, NO.

6 **MS. NUGENT:** MAY I APPROACH?

7 **THE COURT:** YOU MAY.

8 (DOCUMENT HANDED TO WITNESS.)

9 **BY MS. NUGENT:**

10 **Q.** IF YOU LOOK AT WHAT HAS BEEN PROVIDED TO YOU AS
11 EXHIBIT 68. HAVE YOU READ IT?

12 **A.** YEAH.

13 **Q.** MIKE CUTSHAW DID NOT FEEL COMFORTABLE PUTTING HIM NAME ON
14 THAT DOCUMENT, DID HE?

15 **MR. LAFAYETTE:** OBJECTION, HEARSAY, LOOKING AT THIS
16 DOCUMENT.

17 **THE COURT:** SHE IS NOT ASKING FOR THE DOCUMENT TO BE
18 ADMITTED.

19 DO YOU KNOW THE ANSWER TO THE QUESTION, YES OR NO?

20 **THE WITNESS:** THAT IS NOT WHAT THE DOCUMENT STATES.

21 **BY MS. NUGENT:**

22 **Q.** I'M ASKING WHAT YOU KNEW.

23 **THE COURT:** TURN OVER THE DOCUMENT. YOU ARE NOT EVEN
24 ON IT. TURN OVER THE DOCUMENT.

25 I AM NOT EXACTLY SURE WHY SHE SHOWED IT TO YOU. JUST

1 ANSWER THE QUESTION. IF YOU DON'T KNOW, YOU DON'T KNOW.

2 **THE WITNESS:** I DON'T KNOW.

3 **MS. NUGENT:** I HAVE NOTHING FURTHER.

4 **THE COURT:** ANYTHING ON THAT QUESTION?

5 **MR. LAFAYETTE:** NO, YOUR HONOR.

6 **THE COURT:** ALL RIGHT. MR. METCALF, YOU MAY STEP
7 DOWN. WHY DON'T WE GO -- STEP DOWN. WHY DON'T WE GO AHEAD.
8 IT'S ALMOST 10:00 O'CLOCK. TAKE A BREAK. I NEED TO TALK TO
9 THE LAWYERS.

10 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

11 **THE COURT:** DO PLAINTIFFS REST?

12 **MS. NUGENT:** YES.

13 **THE COURT:** ARE THERE MOTIONS?

14 **MR. LAFAYETTE:** YES, YOUR HONOR.

15 **THE COURT:** STATE BRIEFLY, LIST THE GROUNDS UPON
16 WHICH THE MOTION IS BROUGHT.

17 **MR. LAFAYETTE:** FIRST IS ON OF THE GROUNDS OF
18 PUNITIVE DAMAGES. THERE IS NO EVIDENCE IN THIS RECORD
19 WHATSOEVER THAT THERE WAS AN OFFICER OR DIRECTOR WHO DID
20 ANYTHING. THERE IS NO EVIDENCE IN THIS RECORD THAT THERE WAS
21 A MANAGING AGENT. NONE OF THE INDIVIDUALS WHO TESTIFIED IN
22 THIS CASE HAVE EVEN TESTIFIED THAT THEY ALONE COULD HIRE AND
23 FIRE ANYONE, LET ALONE THAT THEY COULD OFFER THAT THEY COULD
24 GIVE AN OPINION THAT -- OR DO SOMETHING THAT WOULD AFFECT
25 CORPORATE POLICY.

1 AND SO IN THE ABSENCE OF THAT, IN THE ABSENCE OF A PERSON
2 WHO IS AT THAT LEVEL DOING ANYTHING THEMSELVES, LET ALONE
3 RATIFYING AND ADOPTING SOMETHING, THERE ISN'T ANY EVIDENCE.
4 THE PEOPLE WHO TESTIFIED IN THIS CASE SO FAR, ERIC PEREZ.
5 ERIC PEREZ COULDN'T HIRE AND FIRE ON HIS OWN. HE -- A PERSON
6 WHO HAS AT BEST ABOUT 30 PEOPLE WHO REPORT UNDER HIM IN A
7 REFINERY WHERE THERE ARE OVER 700 PEOPLE WHICH IS PART OF A
8 MUCH LARGER ORGANIZATION.

9 CHRISTINE LAYNE WAS A LOCAL HR PERSON IN THE MARTINEZ
10 REFINERY. THEY HAVE NOT CALLED ANYONE ABOVE THEM. AND MIKE
11 BECK IS NO DIFFERENT. HE HAD 60 PEOPLE IN A 700 PERSON
12 REFINERY. THERE IS NO ONE WHO HAS TESTIFIED THAT THEY HAVE --
13 THAT THEY RISE TO THAT LEVEL. THAT IS MY FIRST ONE.

14 **THE COURT:** KEEP GOING.

15 **MR. LAFAYETTE:** ON THE CLAIM OF DISCRIMINATION, THE
16 PLAINTIFF, HERSELF, HAS TESTIFIED THAT SHE WAS NOT AWARE OF
17 ANY OF THESE INDIVIDUALS, WHO I WOULD CALL ACTORS, HAVING ANY
18 BIAS AGAINST WOMEN. I SPECIFICALLY ASKED HER ABOUT MS. LAYNE.
19 SHE SAYS NO. MR. PEREZ, NO. MR. CAMERON CURRAN, NO.

20 SHE ALLUDES TO SOME THINGS ABOUT MR. FISCHER, BUT THE
21 RECORD IS CLEAR MR. FISCHER NEVER PARTICIPATED IN ANY
22 DECISIONS REGARDING HER.

23 AND IF THEY WANT TO TALK ABOUT A CAT'S PAW, THERE IS NO
24 EVIDENCE THERE EITHER. WE HAVE TO REMEMBER MR. FISCHER SIGNED
25 OFF ON TWO ASSESSMENTS MOVING HER FORWARD. IF HE HAD SIGNED

1 OFF ON ASSESSMENTS SAYING THAT SHE SHOULDN'T MOVE FORWARD,
2 THEN THAT WOULD BE A DIFFERENT STORY. HE DID NOT. THERE IS
3 NOTHING IN THIS RECORD THAT IN ANY WAY WHATSOEVER SAYS
4 ANYTHING ABOUT HOW ANYBODY ACTED AGAINST HER WITH ANY FORM OF
5 DISCRIMINATION.

6 NEXT, YOUR HONOR, I'M GOING TO GO TO -- AND SO THE LAW
7 REQUIRES THAT SHE DEMONSTRATE THAT SHE WAS TREATED
8 DIFFERENTLY. OTHERWISE -- AS HER PRIMA FACIE CASE, THAN
9 SOMEONE SIMILARLY SITUATED TO HER. WHO WERE THE PEOPLE
10 SIMILARLY SITUATED TO HER? LET'S TALK ABOUT THE TARDIES. SHE
11 TALKED ABOUT HER CLASSMATES. EACH ONE OF THEM --

12 **THE COURT:** LET ME SAY THIS: JUST GIVE ME THE LIST
13 AND I WILL LET YOU GO ON AND ON LATER SO THAT YOU HAVE
14 PRESERVED IT FOR THE RECORD.

15 WITH RESPECT TO THE CLAIMS BROUGHT IN THIS CASE, I WILL
16 LIKELY DENY IT. WITH RESPECT TO THE PUNITIVE DAMAGES, I'M
17 THINKING ABOUT IT. JUST LIST FOR ME THE CLAIMS, SO IT CAN
18 PRESERVED. I WILL GIVE YOU TIME AT THE END OF THE DAY TO
19 ARGUE.

20 **MR. LAFAYETTE:** THE CLAIM FOR HARASSMENT, WE WOULD --
21 I WILL LIST THEM AS I CAN WITHOUT SPECIFICS TO THE NUMBER.
22 OKAY? THERE IS THE CLAIM FOR GENDER HARASSMENT, THERE IS THE
23 CLAIM FOR GENDER DISCRIMINATION. THERE ALSO THE CLAIM FOR
24 GENDER RETALIATION FOR COMPLAINING OF GENDER HARASSMENT OR
25 DISCRIMINATION. THERE IS THE 1102 CLAIM, WHICH IS THE

1 DANGEROUS CONDITION CLAIM. ON THAT ONE I WOULD POINT OUT
2 SOMETHING. TO THE EXTENT THE PLAINTIFF IDENTIFIED ANY STATUTE
3 WHATSOEVER, HER REFERENCE WAS TO THIS... OSHA REQUIRES THE
4 WEARING OF GLOVES IF YOU ARE DEALING WITH ACID. THAT IS WHAT
5 SHE TESTIFIED AT BEST. AND THAT DOESN'T GET US HERE BECAUSE
6 THAT WAS NEVER THE NATURE OF HER COMPLAINT.

7 **THE COURT:** ANYTHING ELSE?

8 **MR. LAFAYETTE:** JUST AS A SUMMARY, YOUR HONOR, THOSE
9 ARE THE ISSUES.

10 **THE COURT:** RESPONSE?

11 **MS. SMALLETS:** AS TO THE MANAGING AGENTS, WE HAVE
12 TESTIMONY FROM MIKE BECK THAT HE IS IN CHARGE OF THE OPCEN
13 UNIT. HE MADE THE HIRING AND FIRING DECISIONS. HE MADE THE
14 DECISION TO FIRE MS. NEWTON. HE TESTIFIED WITH RESPECT TO
15 THAT UNIT, THE BUCK STOPPED WITH HIM. HE IS THE ONE IN
16 CHARGE. HE ALSO TESTIFIED THE DECISION WAS RATIFIED AND
17 MS. LAYNE DID AS WELL, THE DECISION WAS ULTIMATELY APPROVED BY
18 THOR NYGAARD, TOM RIZZO, AND LORI MARTINELLI.

19 **THE COURT:** BUT HOW DO I KNOW THAT? THOSE PEOPLE
20 HAVEN'T TESTIFIED.

21 **MS. NUGENT:** MS. LAYNE TESTIFIED TO THAT AND MR. BECK
22 TESTIFIED TO THAT. SO THEY BOTH SAID THAT. AND IT IS IN
23 EXHIBIT 59, WHICH IS IN EVIDENCE.

24 **MR. LAFAYETTE:** THERE IS --

25 **THE COURT:** I DIDN'T ASK FOR A RESPONSE.

1 **MS. SMALLETS:** AND THE TESTIMONY IS MR. RIZZO IS THE
2 PERSON IN CHARGE OF THIS PLANT. SO HE APPROVED IT. THAT IS
3 EXHIBIT 59. AND HE'S IN CHARGE OF THE PLANT.

4 **THE COURT:** WHERE IN 59?

5 **MS. SMALLETS:** IT STARTS TOM, THOR AND I SPOKE, AND
6 WE ARE IN AGREEMENT TO PROCEED WITH THE TERMINATION OF CIARA.

7 **THE COURT:** ANYTHING ELSE?

8 **MS. SMALLETS:** OBVIOUSLY WE OPPOSE WITH RESPECT TO
9 ALL THE CLAIMS; DO YOU WANT ME TO ADDRESS THEM SUBSTANTIVELY?

10 **THE COURT:** NO. ALL RIGHT. I'LL COME BACK TO THIS
11 LATER. WE'LL STAND IN RECESS FOR TEN MORE MINUTES.

12 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

13 **MS. SMALLETS:** THANK YOU, YOUR HONOR.

14 (RECESS TAKEN AT 10:05 A.M.; RESUMED AT 10:15 A.M.)

15 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

16 **THE CLERK:** REMAIN SEATED. COURT IS IN SESSION.

17 **THE COURT:** SO WHEN I BRING THE JURY OUT, YOU CAN
18 OFFICIALLY REST AND WE WILL START THE DEFENSE CASE. THE COURT
19 WILL RESERVE ON THE PENDING MOTIONS.

20 LET'S BRING THEM OUT.

21 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

22 **THE COURT:** MR. LAFAYETTE, TO YOUR SIDE, PLEASE.

23 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

24 **THE COURT:** WE ARE BACK ON THE RECORD. THE RECORD
25 WILL REFLECT THE JURY IS BACK. MS. SMALLETS, ANY MORE

1 WITNESSES?

2 **MS. SMALLETS:** NO, YOUR HONOR.

3 **THE COURT:** DO YOU REST?

4 **MS. SMALLETS:** YES.

5 **THE COURT:** THANK YOU. DEFENSE CASE.

6 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

7 **THE COURT:** YOUR WITNESS.

8 **MR. LAFAYETTE:** FIRST WITNESS, MR. PATRIK NEUMAN,
9 YOUR HONOR.

10 **THE COURT:** OKAY.

11 (**PATRIK NEUMAN**, CALLED AS A WITNESS FOR THE DEFENDANT,
12 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

13 **THE WITNESS:** YES, MA'AM.

14 **THE CLERK:** PLEASE BE SEATED. IF YOU WILL SCOOT --
15 GO AHEAD AND SCOOT UP TO THE MICROPHONE.

16 **THE WITNESS:** CAN I TAKE OFF MY COAT?

17 **THE CLERK:** THAT'S FINE. IF YOU WILL SCOOT UP AND
18 SCOOT THE MICROPHONE UP, AND THEN PLEASE STATE YOUR FULL NAME
19 AND SPELL YOUR LAST NAME.

20 **THE WITNESS:** MY NAME IS PATRIK NEUMAN. LAST NAME IS
21 SPELLED N-E-U-M-A-N.

22 **THE COURT:** GOOD MORNING, MR. NEUMAN.

23 **THE WITNESS:** GOOD MORNING, JUDGE.

24 **THE COURT:** YOU MAY PROCEED.

25 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

NEUMAN - DIRECT / LAFAYETTE

1 MR. NEUMAN, CAN YOU SPELL YOUR FIRST NAME, TOO.

2 **THE WITNESS:** MY FIRST NAME IS PATRIK. IT'S SPELLED
3 DIFFERENT. IT'S P-A-T-R-I-K, WITH NO C.

4 THE COURT: THANK YOU.

5 MR. LAFAYETTE: THANK YOU.

DIRECT EXAMINATION

7 || BY MR. LAFAYETTE:

8 Q. MR. NEUMAN, WHERE ARE YOU EMPLOYED?

A. PROCESS OPERATOR WITH SHELL OIL MARTINEZ.

Q. AND HOW LONG HAVE YOU BEEN THERE?

11 A. JANUARY 4TH, I WILL BE THREE YEARS.

12 || Q. OKAY. ARE YOU MARRIED?

13 **A.** YES. HAPPILY.

14 Q. DO YOU HAVE KIDS?

15 **A.** I HAVE ONE AND I HAVE ONE COMING WITHIN THE NEXT WEEK OR
16 TWO.

17 THE COURT: GET SLEEP NOW.

18 (LAUGHTER.)

19 BY MR. LAFAYETTE:

20 Q. MR. NEUMAN, WERE YOU IN THE PROBATIONARY TRAINING CLASS
21 WITH MS. NEWTON?

22 || A. YES, I WAS.

23 Q. AND DID THAT START OUT WITH APPROXIMATELY TWO-MONTH CLASS
24 WHERE ALL 22 OF YOU WERE TOGETHER?

25 **A.** THAT'S CORRECT.

1 **Q.** AND AFTER THAT DID YOU GO THROUGH A TRAINING -- DID YOU
2 GET ASSIGNED TO OPCEN?

3 **A.** YES, THAT'S CORRECT.

4 **Q.** AND THEN YOU HAD TRAINING WITH SOMEONE IN OPCEN. WHO WAS
5 YOUR TRAINER?

6 **A.** WE WERE TOLD THAT OUR OFFICIAL TRAINER WAS JEFF FISCHER.
7 HE WAS A MENTOR FOR THE DEPARTMENT. BUT THE FIRST -- I DON'T
8 RECALL THE EXACT DAYS, MAYBE THREE OR FOUR WAS WITH AN
9 INDIVIDUAL, WHO I BELIEVE AT THE TIME WAS SENIOR OPERATOR,
10 ANDY GREEN.

11 **Q.** AND MR. FISCHER AT SOME POINT BECAME YOUR TRAINER. WOULD
12 THAT BE ACCURATE?

13 **A.** YES. THAT'S A CORRECT STATEMENT.

14 **Q.** OKAY. DID THERE COME A POINT IN TIME WHEN MS. NEWTON
15 SUFFERED A TRAGEDY AND LEFT THE CLASS?

16 **A.** THAT'S CORRECT. WE WERE IN CLASS WHEN SHE GOT THE PHONE
17 CALL.

18 **Q.** AND AS SHE WAS ABOUT TO RETURN BACK TO WORK, WAS THERE A
19 CONVERSATION THAT TOOK PLACE BETWEEN YOU, MR. FISCHER, AND THE
20 OTHER TWO TRAINEES ABOUT WHAT YOU GUYS SHOULD DO WHEN SHE
21 RETURNED BACK TO WORK?

22 **A.** YES, THAT'S CORRECT.

23 **Q.** WHAT DID MR. FISCHER SAY?

24 **A.** UNFORTUNATELY, MS. NEWTON, MRS. NEWTON, CIARA, LOST HER
25 FATHER SUDDENLY, AND HE DID STATE THAT WE HAVE TO HELP HER OUT

1 WHEN SHE COMES BACK BECAUSE SHE'LL BE GONE.

2 **Q.** OKAY. NOW, DID YOU HAVE AN OPPORTUNITY TO WITNESS
3 MR. FISCHER'S INTERACTIONS WITH MS. NEWTON?

4 **A.** YES.

5 **Q.** DID YOU, IN DOING SO, EVER WITNESS HIM TREATING HER
6 DIFFERENTLY BECAUSE OF HER GENDER?

7 **MS. NUGENT:** LEADING.

8 **THE COURT:** I'M GOING TO ALLOW IT.

9 **MS. NUGENT:** AND SPECULATION.

10 **THE COURT:** WELL, THAT WOULD BE THIS ENTIRE CASE
11 GIVEN THE QUESTIONS ASKED BY BOTH SIDES.

12 YOU CAN ANSWER THE QUESTION.

13 **THE WITNESS:** CAN YOU REPEAT THE QUESTION AGAIN,
14 PLEASE?

15 **BY MR. LAFAYETTE:**

16 **Q.** DID YOU EVER WITNESS MR. FISCHER TREATING HER DIFFERENTLY
17 BECAUSE OF HER GENDER?

18 **A.** I DON'T BELIEVE BY GENDER.

19 **Q.** DID YOU EVER HEAR HIM SAY SOMETHING SUGGESTING HE HAD A
20 BIAS AGAINST WOMEN?

21 **A.** I DON'T RECALL ANYTHING SPECIFICALLY BIASED BY WOMEN. I
22 AM SORRY.

23 **Q.** NOW, AT ANY POINT IN TIME -- DO YOU KNOW WHAT A SHIFT SWAP
24 IS?

25 **A.** LIKE SHIFT SWAP AT WORK?

1 **Q.** YES.

2 **A.** YES, I DO.

3 **Q.** DO YOU KNOW HOW IT'S DONE IF YOU WANT TO SHIFT SWAP?

4 **A.** YES.

5 **Q.** HOW DO YOU DO IT?

6 **A.** SO, FIRST OF ALL, A SHIFT SWAP IS BASICALLY -- IT REQUIRES
7 TWO OPERATORS TO AN AGREEMENT FOR A SHIFT. SO, FOR EXAMPLE,
8 IF I WANT THIS DAY OFF AND HE'S -- IT'S GOT TO BE ON AN
9 OPPOSITE TEAM. SOMEONE THAT -- WE HAVE FOUR TEAMS IN OUR
10 DEPARTMENT. AND THERE'S ONLY TWO -- SOMETIMES IT CAN BE THREE
11 TEAMS, BUT BASICALLY IT'S AN AGREEMENT BETWEEN TWO OPERATORS,
12 HEY, YOU WORK MY DAY AND THE OTHER OPERATOR WORKS -- I WORK
13 HIS DAY WITHIN A PAY PERIOD.

14 SHELL HAS A POLICY THAT IT CAN'T GENERATE ANY TYPE OF
15 OVERTIME. SO -- AND IT HAS TO BE -- YOU HAVE TO HAVE A VERBAL
16 AGREEMENT AND A SIGNED AGREEMENT, AND THEN ALSO MY FOREMAN AND
17 THE OTHER TEAM'S FOREMAN HAVE TO AGREE WITH THE SWAP. AND
18 THEN I THINK IT GOES FROM THERE TO WHOEVER IT FORWARDS TO,
19 MAYBE IT GOES ABOVE THE FOREMANS FOR THE FINAL APPROVAL.

20 **Q.** DID YOU EVER DO A SHIFT SWAP WITH MS. NEWTON?

21 **A.** NO, I DON'T RECALL DOING A SWIFT SWAP WITH CIARA.

22 **Q.** WOULD IT HAVE BEEN POSSIBLE FOR YOU TO DO A SHIFT SWAP
23 WITH MS. NEWTON, GIVEN YOUR TEAM AND HERS?

24 **A.** THAT WOULD BE DIFFICULT BECAUSE I -- ME AND CIARA SO IF I
25 WORKED -- I WORK A NIGHT SHIFT, SHE WORKS A DAY SHIFT. WE

1 KIND OF FOLLOW EACH OTHER. SO THAT WOULD BE DIFFICULT. BUT
2 THERE WERE SOME GAPS, JUST THE WAY THE SCHEDULE COMES THAT
3 MAYBE ONE OR TWO DAYS. I DON'T HAVE THE SCHEDULE IN FRONT OF
4 ME. ONE OR TWO DAYS A MONTH WHERE THAT MAYBE COULD BE
5 POSSIBLE IF IT'S IN THE SAME PAY PERIOD.

6 Q. DID SHE EVER ASK YOU TO DO A SHIFT SWAP WITH HER?

7 A. I DON'T THINK SO. I DON'T THINK SHE WOULD HAVE ASKED ME
8 BECAUSE WE WERE IN THE SAME SHIFT KIND OF BACK AND FORTH.

9 Q. I WANT TO FOCUS ON A SPECIFIC DAY, JULY 22, 2016.

10 DO YOU KNOW WHAT I AM TALKING ABOUT?

11 A. WAS THAT THE DAY -- THAT WAS THE DAY WHEN SHE WAS COMING
12 LATE TO WORK?

13 Q. THAT'S THE DAY I'M GOING TO ASK YOU ABOUT.

14 A. OKAY.

15 Q. OKAY? ON THAT DAY WHO REACHED OUT TO WHO FIRST?

16 A. I REACHED OUT TO HER, I BELIEVE.

17 Q. AND WHEN YOU REACHED OUT TO HER, HOW DID YOU REACH OUT TO
18 HER?

19 A. JUST ASKING IF SHE'S OKAY. YOU KNOW, IT WAS -- I THINK IT
20 WAS APPROXIMATELY 6:00 A.M. BECAUSE PEOPLE ARE LATE SOMETIMES
21 BOTTOM LINE, JUST TO SEE IF THERE IS AN EMERGENCY? SOMETHING
22 HAPPENED? PEOPLE IN CAR ACCIDENTS, ET CETERA.

23 Q. SO DID YOU JUST SAY IT WAS 6:00 A.M. THAT YOU REACHED OUT
24 TO HER?

25 A. I BELIEVE THAT WAS THE TIME.

1 **Q.** NOW, WHEN WAS HER SHIFT SUPPOSED TO START?

2 **A.** SO SHELL POLICY IS 6:15 BUT WE -- YEAH, IT'S 6:15 BUT YOU
3 COULD COME EARLIER AS LONG AS IT IS A VERBAL OR IT IS AN
4 AGREEMENT WITH THE OTHER OPERATOR.

5 **Q.** I'M GOING TO ASK YOU. IS 6:15 THE TIME THAT YOU ARE
6 MARKED AS TARDY?

7 **A.** YES, THAT'S CORRECT.

8 **Q.** OKAY. SO I'M ASKING A LITTLE DIFFERENT QUESTION.

9 WHEN ARE YOU SUPPOSED TO BE THERE IF 6:15 IS THE TARDY?

10 **A.** TAKES YOU PROBABLY TO CLIMB UP THE STAIRS -- WELL, I GET
11 RELIEF AT 5:00. BUT IF YOU ARE THE ONE THAT WANTS TO BE
12 RELIEVED, BE THERE AT 6:15 AND PROBABLY BE IN THE PARKING LOT
13 BY A.M. YOU HAVE TO WALK UP THE STAIRS. YOU HAVE TO WEAR
14 FRC'S AND GET READY.

15 **Q.** SO DID YOU TEXT HER AT 6:00A.M.?

16 **A.** YES.

17 **Q.** AND WHAT DID YOUR TEXT MESSAGE SAY?

18 **A.** ARE YOU OKAY? ARE YOU COMING IN? PROBABLY. SOMETHING
19 ALONG THOSE LINES.

20 **Q.** AND WHY AT 6:00 A.M. WERE YOU ASKING IF SHE'S COMING IN?

21 **A.** BECAUSE SHE WAS SUPPOSED TO WORK THAT DAY.

22 **Q.** OKAY. AND SO PRIOR TO 6:00 A.M., HAD MS. NEWTON
23 COMMUNICATED WITH YOU ANYTHING ABOUT HER PLANS TO COME IN
24 LATE?

25 **A.** I DON'T RECALL. I HAVE MY PHONE IN MY POCKET.

Q. AFTER YOU SENT THE TEXT ASKING IF SHE WAS COMING IN, AFTER
YOU SENT THAT AT 6:00 A.M., DID SHE CALL YOU?

A. SHE DID RESPOND, YES.

Q. AND WHEN SHE CALLED YOU, WHAT DID SHE SAY?

A. OR SHE -- IF I'M NOT MISTAKEN, I BELIEVE HER CAR BROKE DOWN. SHE HAD VEHICLE PROBLEMS.

Q. OKAY. AND DID YOU LEAVE AT 6:15 OR DID YOU STAY?

A. I STAYED. I HAVE TO LEGALLY STAY.

Q. WHY DO YOU SAY YOU HAVE TO STAY LEGALLY?

A. BECAUSE I CAN'T LEAVE THE UNIT WITHOUT -- THERE'S LAWS THAT REQUIRES SOMEONE TO COVER THAT SEAT FOR RUNNING THE UNIT

Q. OKAY. AT SOME POINT IN TIME THAT DAY, DID YOU LEAVE?

A. I DID WHEN SHE CAME IN.

Q. OKAY. NOW, IN FRONT OF YOU THERE IS A BINDER. DO YOU HAVE IT THERE IN FRONT OF YOU?

A. NO.

THE COURT: NO. I DON'T THINK WE HAVE BEEN GIVEN
BINDERS.

MR. LAFAYETTE: SORRY, YOUR HONOR.

(BINDER HANDED TO WITNESS.)

BY MR. LAFAYETTE:

Q. THERE'S A TAB THERE THAT SAYS EXHIBIT 129. I WANT YOU TO
OPEN THAT UP.

MR. LAFAYETTE: AND YOUR HONOR, IT IS THE SAME AS PLAINTIFF'S EXHIBIT 135, WHICH IS AN ISOLATED DOCUMENT. EVEN

NEUMAN - DIRECT / LAFAYETTE

1 THOUGH I'M SHOWING 129, I'M ACTUALLY GOING TO USE 135.

2 **THE COURT:** OKAY. EVERYBODY AGREED ON THAT?

3 **MS. NUGENT:** YES, YOUR HONOR.

4 **THE COURT:** ALL RIGHT. GO AHEAD.

5 **BY MR. LAFAYETTE:**

6 **Q.** DO YOU RECOGNIZE EXHIBIT 135?

7 **THE CLERK:** ARE YOU GOING TO USE THE --

8 **MR. LAFAYETTE:** I'M GOING TO USE THIS.

9 **THE WITNESS:** I AM SORRY. I SEE 129 AND --

10 **BY MR. LAFAYETTE:**

11 **Q.** LOOK AT 129. DO YOU SEE IT THERE?

12 **A.** YES.

13 **Q.** DO YOU RECOGNIZE IT?

14 **A.** IT LOOKS LIKE MY PD LOG.

15 **Q.** YES. AND WHAT IS A PD LOG?

16 **A.** IT'S BASICALLY -- IT'S FOR POSITIVE AND NEGATIVE REMARKS
17 ON YOUR FILE AS AN EMPLOYEE.

18 **Q.** OKAY. AND --

19 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
20 EVIDENCE, YOUR HONOR.

21 **THE COURT:** ANY OBJECTION?

22 **MS. NUGENT:** NO.

23 **THE COURT:** ADMITTED.

24 **THE CLERK:** IS IT 129 --

25 **THE COURT:** YES, 129.

1 **MR. LAFAYETTE:** MAKE IT 135. BECAUSE 129 IS A REALLY
2 BIG DOCUMENT. MAKE IT 135.

3 **MS. NUGENT:** IT HAS BEEN MARKED ON THE EXHIBIT LIST
4 135.

5 **MR. LAFAYETTE:** AS AN ISOLATED DOCUMENT.

6 **THE COURT:** ALL RIGHT. WHEN YOU ASK YOUR QUESTIONS
7 THEN, USE 135.

8 **MR. LAFAYETTE:** THANK YOU.

9 (PLAINTIFF'S EXHIBIT 135 RECEIVED IN EVIDENCE)

10 **BY MR. LAFAYETTE:**

11 **Q.** LOOKING AT EXHIBIT 135, SIR, ARE THERE SOME ENTRIES IN
12 YOUR PD LOG MEANT BY JEFF FISCHER?

13 **THE COURT:** MR. NEUMAN --

14 **THE WITNESS:** YES, MA'AM.

15 **THE COURT:** -- YOUR BOOK SAYS 129. IT IS THE SAME
16 THING. WE ARE JUST GOING TO CALL IT 135.

17 **THE WITNESS:** YES, YOUR HONOR. THANK YOU.

18 **THE COURT:** GO AHEAD.

19 **BY MR. LAFAYETTE:**

20 **Q.** ARE THERE SOME ENTRIES ON YOUR PD LOG MADE BY JEFF
21 FISCHER?

22 **A.** YES.

23 **Q.** IN THE FIRST INSTANCE I AM GOING TO SHOW YOU ONE THAT'S
24 DATED MARCH 22, 2016. DO YOU SEE THAT?

25 **A.** YES, SIR.

1 **Q.** AND WAS THAT -- DID YOU UNDERSTAND THAT WAS AN ENTRY
2 PLACED IN YOUR PD LOG BY JEFF FISCHER?

3 **A.** YES, SIR.

4 **Q.** AND THERE IS ANOTHER ENTRY THERE THAT'S DATED APRIL 16,
5 2016, RIGHT?

6 **A.** APRIL 4TH, 2016. YES.

7 **Q.** APRIL 4TH. THANK YOU FOR CORRECTING ME.

8 AND THERE WAS ANOTHER ENTRY MADE BY MR. FISCHER, RIGHT?

9 **A.** YES.

10 **Q.** AND THAT IS WHEN YOU WERE IN THE TRAINING PROGRAM, RIGHT?

11 **A.** THE TWO COACHING, YES.

12 **Q.** NOW, IN YOUR CLASS, OKAY? THERE WERE FOUR. WERE THERE
13 TWO WHO WERE PERCEIVED AS BEING ADVANCED?

14 **A.** YES. THAT'S A TRUE STATEMENT.

15 **Q.** AND WHO WERE THEY?

16 **A.** MENA EKELEMU. I CAN'T PRONOUNCE HIS NAME. SORRY. AND
17 JOSE NAVARRO.

18 **Q.** WERE THERE TWO WHO WERE GENERALLY SEEN AS NOT AS ADVANCED?

19 **A.** THAT'S A CORRECT STATEMENT.

20 **Q.** WHO WERE THOSE TWO?

21 **A.** MYSELF, PATRIK NEUMAN, AND CIARA NEWTON.

22 **Q.** DO YOU KNOW IF MR. FISCHER MADE PERFORMANCE ISSUES IN
23 MS. NEWTON'S PD LOG? JUST IF YOU KNOW?

24 **A.** I DON'T KNOW THAT. THAT'S USUALLY CONFIDENTIAL.

25 **Q.** WERE YOU EVER LATE TO CLASS?

A. NOT THAT I RECALL, SIR. NO.

Q. WAS MS. NEWTON EVER LATE TO CLASS?

A. I DON'T RECALL THAT EITHER.

Q. OKAY. NOW, AFTER YOU LEFT TRAINING, DID YOU GO TO OPCEN OR DID YOU GO TO THE TURNAROUND?

A. AFTER THE TRAINING IN THE CLASSROOM?

Q. YES.

A. I WENT TO OPCEN IN MY UNIT INITIALLY.

Q. DID YOU DO ANY WORK ON THE TURNAROUND?

A. YES. I HELPED OUT. ABSOLUTELY.

Q. YOU HELPED OUT. OKAY.

A. I WASN'T ASSIGNED IT, NO.

Q. I'M GOING TO HAVE YOU TAKE A LOOK AT A COUPLE OF OTHER
ENTRIES HERE.

APRIL 12, 2016, WAS THAT A JEFF FISCHER ENTRY FOR YOU?

A. YES.

Q: THEN JUNE 12, IS THAT ANOTHER JEFF FISCHER ENTRY FOR YOU?

A. YES, THAT'S CORRECT.

Q. OKAY. NOW, YOUR -- WHEN YOU WERE IN THE CLASS --

MR. LAFAYETTE: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT. CROSS? ANY?

CROSS-EXAMINATION

BY MS. NUGENT:

Q. HI, MR. NEUMAN.

A. HELLO, MA'AM.

1 **Q.** DID YOU RECEIVE A SUBPOENA TO TESTIFY IN THIS CASE?

2 **A.** NO, I DIDN'T.

3 **Q.** YOU ARE HERE VOLUNTARILY?

4 **A.** YES.

5 **MS. NUGENT:** I HAVE NOTHING FURTHER.

6 **THE COURT:** ALL RIGHT. MR. NEUMAN, YOU MAY STEP
7 DOWN, SIR. NEXT WITNESS.

8 **MR. LAFAYETTE:** LORI MARTINELLI.

9 **THE WITNESS:** I -- AM I CLEAR TO GO HOME OR STAY
10 HERE?

11 **THE COURT:** YOU'RE DONE.

12 **THE WITNESS:** THANK YOU.

13 **THE COURT:** MS. MARTINELLI, STAND --

14 **THE CLERK:** STAND AND BE SWORN.

15 **THE WITNESS:** YES.

16 (**LORI MARTINELLI**, CALLED AS A WITNESS FOR THE DEFENDANT,
17 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

18 **THE WITNESS:** YES.

19 **THE CLERK:** PLEASE BE SEATED. IF YOU WILL SCOOT UP
20 AND ADJUST THAT MIC AND PLEASE STATE YOUR FULL NAME AND SPELL
21 YOUR LAST NAME.

22 **THE WITNESS:** LORI MARTINELLI. M-A-R-T-I-N-E-L-L-I.

23 **THE COURT:** GOOD MORNING, MA'AM.

24 **THE WITNESS:** GOOD MORNING.

25 **THE COURT:** YOU MAY PROCEED.

1 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

2 **DIRECT EXAMINATION**

3 **BY MR. LAFAYETTE**

4 **Q.** MS. MARTINELLI, CAN YOU TELL ME WHERE YOU ARE EMPLOYED?

5 **A.** I'M EMPLOYED BY SHELL OIL COMPANY.

6 **Q.** WHERE ARE YOU LOCATED?

7 **A.** I'M CURRENTLY LOCATED IN HOUSTON, TEXAS.

8 **Q.** HOW LONG HAVE YOU BEEN LOCATED IN HOUSTON, TEXAS?

9 **A.** FOR ABOUT A YEAR AND A HALF.

10 **Q.** PRIOR TO THAT, WHERE WERE YOU LOCATED?

11 **A.** IN MARTINEZ, CALIFORNIA.

12 **Q.** AND HOW LONG WERE YOU IN MARTINEZ, CALIFORNIA?

13 **A.** FOR FOUR YEARS.

14 **Q.** PRIOR TO THAT?

15 **A.** I WAS IN HOUSTON, TEXAS.

16 **Q.** AND PRIOR TO THAT?

17 **A.** I'VE LIVED IN LOUISIANA PRIOR TO THAT.

18 **Q.** OKAY. AND WHAT IS YOUR -- IN 2016, WHAT WAS YOUR POSITION
19 AT THE REFINERY?

20 **A.** MY POSITION WAS HR MANAGER.

21 **Q.** HR MANAGER. NOW, AS AN HR MANAGER, ARE YOU ON THE BOARD
22 OF DIRECTORS OF EQUILON?

23 **A.** NO.

24 **Q.** ARE YOU ON THE BOARD OF DIRECTORS OF THE SHELL OIL
25 COMPANY?

1 **A.** NO.

2 **Q.** ARE YOU AN OFFICER OF EQUILON?

3 **A.** NO.

4 **Q.** ARE YOU AN OFFICER OF THE SHELL OIL COMPANY?

5 **A.** NO.

6 **Q.** DO YOU IMMEDIATELY REPORT TO AN OFFICER OF EITHER ONE OF
7 THOSE COMPANIES?

8 **A.** NO.

9 **Q.** DO YOU IMMEDIATELY -- SO NOW, EQUILON, IS EQUILON JUST THE
10 ONE REFINERY IN MARTINEZ?

11 **A.** NO. THERE'S SEVERAL.

12 **Q.** SEVERAL REFINERIES?

13 **A.** YES.

14 **Q.** ARE THEY ALL IN THE STATE OF CALIFORNIA?

15 **A.** NO.

16 **Q.** WHERE ARE THEY?

17 **A.** THERE'S ONE IN PUGET SOUND IN WASHINGTON STATE. THERE'S
18 ONE IN MOBILE, ALABAMA. I THINK THOSE ARE THE ONES -- OTHER
19 ONES THAT ARE UNDER EQUILON.

20 **Q.** ARE EQUILON - ARE THERE ANY OTHER BUSINESS UNITS UNDER
21 EQUILON?

22 **A.** NOT THAT I AM AWARE.

23 **Q.** NOW, DID YOU HAVE ANY RESPONSIBILITIES FOR THE OTHER
24 REFINERIES?

25 **A.** NO.

1 **Q.** NOW, IF YOU -- DID YOU HAVE THE ABILITY ON YOUR OWN TO
2 HIRE AND FIRE PEOPLE?

3 **A.** NO.

4 **Q.** DID YOU HAVE THE ABILITY ON YOUR OWN TO SET POLICY?

5 **A.** NO.

6 **Q.** IF YOU WANTED TO SET POLICY OR IF YOU WANTED A POLICY,
7 WHAT ALL WOULD YOU HAVE TO DO?

8 **A.** I WOULD HAVE TO INVOLVE OTHER INDIVIDUALS WITHIN THE
9 COMPANY TO DO THAT.

10 **Q.** OKAY. NOW, I'M GOING TO SHOW YOU A COUPLE OF DOCUMENTS
11 AND I WANT YOU TO TELL ME IF YOU RECOGNIZE WHAT THEY ARE.
12 OKAY?

13 FIRST, I WOULD LIKE YOU TO TAKE A LOOK AT -- THERE IS A
14 BINDER IN FRONT OF YOU THERE. THERE IS A DOCUMENT THAT IS
15 MARKED AS EXHIBIT 103.

16 DO YOU RECOGNIZE EXHIBIT 103?

17 **A.** YES.

18 **Q.** WHAT IS THAT?

19 **A.** IT'S OUR ATTENDANCE MANAGEMENT PROGRAM.

20 **Q.** ATTENDANCE MANAGEMENT PROGRAM.

21 **A.** UH-HUH.

22 **Q.** AND THESE ARE SLIDES. DO YOU KNOW HOW THESE SLIDES ARE
23 USED?

24 **A.** IT IS UTILIZED IN OUR ON-BOARDING PROGRAM.

25 **Q.** WHAT'S THAT?

1 **A.** IT IS WHEN WE HIRE NEW EMPLOYEES, WE ON-BOARD THEM TO THE
2 COMPANY AND PROVIDE THEM POLICIES.

3 **Q.** DO YOU KNOW IF THIS IS THE TYPE OF DOCUMENTS THAT ARE
4 PROVIDED TO NEW HIRES LIKE MS. NEWTON?

5 **A.** YES.

6 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
7 INTO EVIDENCE, YOUR HONOR.

8 **THE COURT:** ANY OBJECTION?

9 **MS. NUGENT:** NO OBJECTION.

10 **THE COURT:** ADMITTED.

11 (PLAINTIFF'S EXHIBIT 103 RECEIVED IN EVIDENCE)

12 **BY MR. LAFAYETTE:**

13 **Q.** SO, UPON HIRING -- I WOULD LIKE TO TAKE YOU TO 155.

14 (DISPLAYED ON SCREEN.)

15 EMPLOYEES WILL ENTER THE ATTENDANCE MANAGEMENT PROGRAM,
16 FORMAL DISCIPLINE, IF THEY REACH FIVE CHARGEABLE DAYS AND/OR
17 THREE INCIDENCES IN A ROLLING 12-MONTH PERIOD.

18 DO YOU SEE THAT?

19 **A.** YES.

20 **Q.** DO YOU KNOW IF A TARDY IS AN INCIDENT?

21 **A.** YES.

22 **Q.** IS IT?

23 **A.** YES.

24 **Q.** SO WHAT HAPPENS IF AN EMPLOYEE REACHES THREE TARDIES?

25 **A.** IT WOULD BE A CHARGEABLE INCIDENT.

1 **Q.** NOW, I WOULD LIKE TO SHOW YOU ANOTHER DOCUMENT. AND THIS
2 IS EXHIBIT 104 IN YOUR BINDER.

3 **A.** THERE IS NO 104.

4 **THE COURT:** YEAH, IT'S NOT -- WE DON'T HAVE 104.

5 **MR. LAFAYETTE:** I CAN PUT IT ON THE SCREEN FOR THE
6 CONVENIENCE OF THE JURY --

7 **THE COURT:** YOU NEED TO MAKE SURE COUNSEL HAS IT
8 BEFORE ANYTHING GOES ON THE SCREEN. AND I DON'T THINK IT'S IN
9 EVIDENCE.

10 (COUNSEL CONFER.)

11 **THE COURT:** 104 IS NOT IN EVIDENCE YET.

12 **MR. LAFAYETTE:** 627. IT'S 627 IN YOUR BINDER, YOUR
13 HONOR.

14 **THE COURT:** OKAY.

15 **BY MR. LAFAYETTE:**

16 **Q.** DO YOU HAVE 627 THERE?

17 **A.** YES.

18 **Q.** DO YOU RECOGNIZE THAT DOCUMENT?

19 **A.** YES.

20 **Q.** WHAT IS THAT?

21 **THE COURT:** 627 IS IN EVIDENCE.

22 **MR. LAFAYETTE:** IT'S IN EVIDENCE?

23 **THE COURT:** YES, IT IS.

24 **MR. LAFAYETTE:** THANKS, YOUR HONOR.

25 **THE WITNESS:** YES. THIS IS THE SHELL CODE OF

1 CONDUCT.

2 **BY MR. LAFAYETTE:**

3 Q. AND WHAT IS THE SHELL CODE OF CONDUCT?

4 A. IT'S OUR CODE ON OUR ETHICS AND COMPLIANCES.

5 Q. IS THIS DISTRIBUTED TO ALL EMPLOYEES?

6 A. YES.

7 Q. AND DO YOU KNOW IF IT DETAILS WHAT AN INDIVIDUAL SHOULD DO
8 IF THEY BELIEVED THAT THEY HAD BEEN SUBJECTED TO
9 DISCRIMINATION OR HARASSMENT?

10 A. YES, IT DOES.

11 Q. WHAT ARE THEY SUPPOSED TO DO?

12 A. THERE IS THEY ARE SUPPOSED TO CONTACT THE ETHICS AND
13 COMPLIANCE HOTLINE.

14 Q. ANYTHING ELSE THEY CAN DO?

15 A. THEY CAN REACH OUT TO THEIR MANAGER, HUMAN RESOURCES.

16 Q. ANYTHING ELSE THEY CAN DO?

17 A. THEY COULD REACH OUT TO ANY OTHER INDIVIDUAL, MAYBE A
18 UNION REPRESENTATIVE IF THEY CHOSE.

19 Q. OKAY. THANK YOU. I WANT TO SHOW YOU ANOTHER DOCUMENT
20 WHICH HAS BEEN REFERRED TO AS EXHIBIT 105.

21 **MR. LAFAYETTE:** DO YOU HAVE THAT? 625.

22 **THE WITNESS:** YES.

23 **BY MR. LAFAYETTE:**

24 Q. WHAT IS THIS?

25 A. OUR POSITIVE DISCIPLINE POLICY.

1 **MR. LAFAYETTE:** OKAY. I WOULD LIKE TO MOVE THIS INTO
2 EVIDENCE, YOUR HONOR.

3 **THE COURT:** ANY OBJECTION?

4 **MS. NUGENT:** NO.

5 **THE COURT:** ADMITTED.

6 (DEFENDANT'S EXHIBIT 625 RECEIVED IN EVIDENCE)

7 **BY MR. LAFAYETTE:**

8 **Q.** WHAT IS THIS POLICY ALL ABOUT?

9 **A.** IT OUTLINES WHEN AN EMPLOYEE'S PERFORMANCE IS NOT MEETING
10 EXPECTATIONS, THE PROCESS THAT WE FOLLOW WITH RESPECT TO THAT.

11 **Q.** ALL RIGHT. DO YOU KNOW WHAT THE ATTENDANCE MANAGEMENT
12 PROGRAM IS?

13 **A.** YES.

14 **Q.** WHAT IS THAT?

15 **A.** THE ATTENDANCE MANAGEMENT PROGRAM OUTLINES HOW WE ADDRESS
16 ATTENDANCE WITH OUR EMPLOYEES.

17 **Q.** COULD YOU TAKE A LOOK AT -- I'M SHOWING IT AS 106 IN YOUR
18 BINDER.

19 **A.** YES.

20 **Q.** WHAT IS THAT?

21 **A.** THE ATTENDANCE MANAGEMENT PROGRAM POLICY.

22 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THAT INTO
23 EVIDENCE, YOUR HONOR.

24 **MS. NUGENT:** NO OBJECTION.

25 **THE COURT:** ADMITTED.

(PLAINTIFF'S EXHIBIT 106 RECEIVED IN EVIDENCE)

BY MR. LAFAYETTE:

Q. AND WHAT IS THIS POLICY ALL ABOUT?

A. IT OUTLINES THE PURPOSE OF THE PROGRAM AND THE DIFFERENT ASPECTS OF ATTENDANCE AND ABSENCES.

(DISPLAYED ON SCREEN.)

Q. DO YOU KNOW WHAT A MENTOR IS?

A. YES.

Q. WHAT IS A MENTOR?

A. WE HAVE MENTORS IN OUR LEARNING DEPARTMENT THAT HELP WITH EMPLOYEES' HOURLY AND QUALIFICATIONS AND ENSURING THAT THEY ARE QUALIFIED TO DO THEIR JOB.

Q. DO YOU KNOW IF MENTORS HAVE ANY DIRECT REPORTS?

A. THEY DO NOT.

Q. SO, DO THEY SUPERVISE ANYONE?

A. NO.

Q. WHEN THEY ARE IN A TRAINING UNIT, AND THERE ARE PEOPLE THERE TRAINING, IS THE MENTOR THE SUPERVISOR OR IS THE SHIFT TEAM LEADER THEIR SUPERVISOR?

MS. NUGENT: LEADING.

THE COURT: I'M GOING TO ALLOW IT.

THE WITNESS: THE SHIFT TEAM LEADER IS THE
OR.

BY MR. LAFAYETTE:

Q. I WOULD LIKE YOU TO TAKE A LOOK AT EXHIBIT 111 IN YOUR

1 BINDER.

2 DO YOU RECOGNIZE EXHIBIT 111?

3 **A.** NO.

4 **Q.** OKAY. CAN YOU TAKE A LOOK AT EXHIBIT 626 IN YOUR BINDER.

5 DO YOU SEE THAT?

6 **A.** UH-HUH.

7 **Q.** DO YOU KNOW WHAT THAT IS?

8 **A.** IT'S OUR ANTI-HARASSMENT POLICY.

9 **Q.** AND IS THIS A WRITTEN POLICY?

10 **A.** YES.

11 **Q.** AND HOW IS THIS POLICY DISTRIBUTED?

12 **A.** IT'S DISTRIBUTED DURING ON-BOARDING AND THEN EACH YEAR IN
13 AN EMAIL AS A REMINDER.

14 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
15 INTO EVIDENCE, YOUR HONOR.

16 **MS. NUGENT:** NO OBJECTION.

17 **THE COURT:** ADMITTED.

18 (DEFENDANT'S EXHIBIT 626 RECEIVED IN EVIDENCE)

19 (DISPLAYED ON SCREEN.)

20 **BY MR. LAFAYETTE:**

21 **Q.** TAKING A LOOK AT THIS POLICY, DOES IT PROVIDE A PROCESS
22 FOR COMPLAINING IF SOMEONE THINKS THEY HAVE BEEN SUBJECT TO
23 HARASSMENT?

24 **A.** YES. IT INDICATES IMMEDIATE SUPERVISOR, MANAGER, HUMAN
25 RESOURCES, OR THE ETHICS AND COMPLIANCE HOTLINE.

1 **Q.** THIS HOTLINE, WHO MANAGES THE HOTLINE?

2 **A.** IT IS AN EXTERNAL THIRD PARTY.

3 **Q.** WHAT HAPPENS IF SOMEONE CALLS IN?

4 **A.** THEY MAKE NOTE OF THE COMPLAINT AND WHETHER OR NOT YOU
5 WANT TO BE IDENTIFIED IN THAT COMPLAINT.

6 **Q.** SO YOU CAN CALL ANONYMOUSLY?

7 **A.** YES.

8 **Q.** AND THEN WHAT DO THEY DO WITH IT?

9 **A.** IT GETS REPORTED TO OUR FOCAL POINT FOR THE ETHICS AND
10 COMPLIANCE HOTLINE.

11 **Q.** AND THEN WHAT HAPPENS WITH IT?

12 **A.** THEY WILL SEND IT TO AN APPROPRIATE HUMAN RESOURCE
13 REPRESENTATIVE AND THEY WILL INVESTIGATE THE INCIDENT.

14 **Q.** SO NOW, AT SOME POINT DID SOMEONE COME TO YOU WITH
15 INFORMATION CONCERNING MS. NEWTON?

16 **A.** YES.

17 **Q.** AND WHO WAS IT THAT CAME TO YOU?

18 **A.** CHRISTINE LAYNE.

19 **Q.** AND DID CHRISTINE LAYNE SPEAK TO YOU ORALLY OR DID SHE
20 SEND YOU SOME WRITTEN COMMUNICATION?

21 **A.** BOTH.

22 **Q.** WHAT DID SHE TELL YOU?

23 **A.** SHE TOLD ME THERE WERE SOME CONCERNS WITH WHETHER OR NOT
24 SHE -- WITH HER WORK PERFORMANCE AND ATTENDANCE AND WHETHER OR
25 NOT SHE WOULD MAKE IT THROUGH THE PROBATIONARY PERIOD.

1 **Q.** DID SHE TALK TO YOU ABOUT SPECIFICS?

2 **A.** SOME DETAILS BUT NOT ALL.

3 **Q.** DO YOU HAVE A BIAS AGAINST WOMEN?

4 **A.** NO.

5 **Q.** DID SHE SEND YOU ANY WRITTEN COMMUNICATION?

6 **A.** AN EMAIL.

7 **Q.** DID YOU REVIEW IT?

8 **A.** YES.

9 **Q.** DID YOU DISCUSS IT WITH ANYONE?

10 **A.** I DISCUSSED IT WITH CHRISTINE LAYNE.

11 **Q.** OKAY. AND DID YOU HAVE THE AUTHORITY BY YOURSELF TO
12 DECIDE IF MS. NEWTON SHOULD BE FIRED?

13 **A.** NO.

14 **Q.** DID ANYONE TELL YOU THAT THE PROPOSAL WAS TO FIRE
15 MS. NEWTON BECAUSE SHE WAS A WOMAN?

16 **A.** NO.

17 **Q.** DID ANYONE TELL YOU THAT THERE WAS A PROPOSAL TO FIRE
18 MS. NEWTON BECAUSE SHE HAD COMPLAINED OF GENDER BIAS?

19 **MS. NUGENT:** LEADING.

20 **THE COURT:** SUSTAINED.

21 **THE WITNESS:** NO.

22 **THE COURT:** THE QUESTION IS STRICKEN AS IS THE
23 ANSWER.

24 WHEN I SAY SUSTAINED THAT MEANS YOU DO NOT ANSWER.

25 **THE WITNESS:** I APOLOGIZE. I AM SORRY.

1 **THE COURT:** THE JURY IS INSTRUCTED TO NOT PAY
2 ATTENTION TO THAT. YOU NEED TO HEAR THIS FROM THE WITNESS,
3 NOT THE LAWYER.

4 **BY MR. LAFAYETTE:**

5 **Q.** OTHER THAN WHAT YOU'VE TOLD ME ABOUT WHAT MS. LAYNE SAID
6 TO YOU, WAS THERE ANYTHING ELSE SAID ABOUT MS. NEWTON?

7 **A.** I AM SORRY. CAN YOU REPEAT THE QUESTION?

8 **Q.** OTHER THAN WHAT YOU JUST SAID THAT MS. LAYNE SHARED WITH
9 YOU, WAS THERE ANYTHING ELSE SAID ABOUT MS. NEWTON?

10 **A.** NO.

11 **Q.** TELL US YOUR UNDERSTANDING AS TO WHY MS. NEWTON WAS
12 TERMINATED.

13 **A.** SHE WAS TERMINATED FOR HER ATTENDANCE AND WORK
14 PERFORMANCE.

15 **Q.** WAS THERE ANYTHING ELSE?

16 **A.** NO.

17 **Q.** WERE YOU AWARE OF ANY OTHER REASONS AS TO WHY SHE WAS
18 BEING RECOMMENDED FOR TERMINATION?

19 **A.** NO.

20 **Q.** IF YOU HAD BEEN ADVISED THAT SHE WAS GOING TO BE -- THE
21 RECOMMENDATION -- STRIKE THAT. IF YOU WERE BEING ADVISED THAT
22 THE RECOMMENDATION TO TERMINATE HER WAS BEING BASED ON THE
23 FACT THAT SHE WAS A WOMAN, WHAT WOULD YOU HAVE DONE?

24 **A.** I WOULDN'T HAVE RECOMMENDED THAT -- RECOMMENDED
25 TERMINATION.

Q. IF YOU HAD BEEN TOLD THAT THE RECOMMENDATION WAS BASED UPON HER HAVING MADE A COMPLAINT OF GENDER BIAS, WHAT WOULD HAVE BEEN YOUR RECOMMENDATION?

A. I WOULD NOT HAVE RECOMMENDED TERMINATION.

Q. IF YOU HAD BEEN TOLD THAT THE RECOMMENDATION WAS BASED UPON HER COMPLAINING ABOUT A DANGEROUS CONDITION, WHAT WOULD HAVE BEEN YOUR RECOMMENDATION?

A. IT WOULD HAVE BEEN NOT TO TERMINATE.

Q. IN THE DISCUSSION THAT YOU HAD WITH THE PEOPLE WHO YOU --

MR. LAFAYETTE: NO FURTHER QUESTIONS AT THIS TIME,
YOUR HONOR.

THE COURT: CROSS?

CROSS-EXAMINATION

BY MS. NUGENT:

Q. GOOD MORNING, MS. MARTINELLI.

A. GOOD MORNING.

Q. I JUST HAVE A FEW QUESTIONS WITH YOU.

HAVE YOU EVER TALKED WITH MS. NEWTON PERSONALLY?

A. NOT THAT I REMEMBER, NO.

Q. WAS SHE LATE IN APRIL 2016?

A. I'M SORRY. REPEAT THE QUESTION.

Q. WAS SHE LATE TO WORK IN APRIL 2016

A. IN APRIL OF 2016? I BELIEVE SO. I

O. WAS SHE LATE IN MAY OF 2016?

A. I DON'T HAVE THE DATES THAT

Digitized by srujanika@gmail.com

1 **Q.** OKAY. I'LL USE YOUR TERMINOLOGY. WAS SHE TARDY IN APRIL
2 OF 2016?

3 **A.** I DON'T KNOW THE DATES THAT SHE WAS TARDY. I DON'T HAVE
4 THOSE MEMORIZED.

5 **Q.** HOW ABOUT MAY 2016?

6 **A.** AGAIN, I DON'T KNOW THOSE DATES.

7 **Q.** JUNE 2016?

8 **A.** I DO NOT KNOW.

9 **Q.** JULY 2016?

10 **A.** I DO NOT KNOW.

11 **Q.** AUGUST 2016?

12 **A.** I DO NOT KNOW.

13 **Q.** SEPTEMBER 2016?

14 **A.** I DO NOT KNOW.

15 **Q.** SHELL'S COUNSEL ASKED YOU ABOUT A COUPLE OF POLICIES. I
16 WANT TO QUICKLY GO OVER THEM.

17 THERE WAS ONE LABELED 106 IN THE BINDER IN FRONT OF YOU.
18 WHILE YOU GET THERE, THIS ALSO THE ATTENDANCE MANAGEMENT
19 PROGRAM --

20 **A.** YES.

21 **Q.** -- FOR THE ENTIRE REFINERY OF SHELL'S IN MARTINEZ, RIGHT?

22 **A.** UH-HUH.

23 **Q.** YES?

24 **A.** YES, MA'AM.

25 **Q.** IF YOU LOOK AT 541 AT THE BOTTOM, THE RIGHT-HAND CORNER?

1 **A.** OKAY.

2 **Q.** THERE IS A COLUMN SAY APPROVED BY, DO YOU SEE THAT COLUMN
3 IN?

4 **A.** YES.

5 **Q.** AND YOUR NAME IS IN THAT COLUMN RIGHT?

6 **A.** YES.

7 **Q.** YOU APPROVED THIS POLICY?

8 **A.** YES.

9 **Q.** NOW LET'S TURN TO EXHIBIT 625. THIS WAS THE POSITIVE
10 DISCIPLINE POLICY FOR THE ENTIRE SHELL REFINERY MARTINEZ,
11 RIGHT?

12 **A.** YES.

13 **Q.** AND IF YOU WILL TURN TO WHAT'S THE LITTLE NUMBERS, BOTTOM
14 RIGHT OF THAT ONE, IT SAYS 1642?

15 **A.** YES.

16 **Q.** YOU APPROVED THIS POLICY TOO, DIDN'T YOU?

17 **A.** YES.

18 **Q.** AND YOU APPROVED IT MAY 24TH, 2016?

19 **A.** YES.

20 **Q.** YOU TALKED ABOUT NOT HAVING THE AUTHORITY YOURSELF TO FIRE
21 AN EMPLOYEE WHEN YOU -- I UNDERSTAND YOU ARE IN THE CORPORATE
22 OFFICE NOW IN HOUSTON, RIGHT? FOR SHELL?

23 **A.** YES.

24 **Q.** WHEN YOU ARE IN MARTINEZ, WHOSE AUTHORITY DID YOU HAVE TO
25 GET TO FIRE PEOPLE?

A. I HAD TO SPEAK TO THE GENERAL MANAGER OF THE REFINERY AND
MY MANAGER.

Q. WHO WAS THE GENERAL MANAGER AT THE TIME?

A. TOM RIZZO.

Q. WAS THERE ANYONE WHO WAS HIGHER THAN HIM AT THE REFINERY IN 2016?

A. AT THE REFINERY, NO.

Q. WHO WAS YOUR MANAGER?

A. PAUL HAWES.

Q. THAT'S H-A-W-E-S?

A. YES.

Q. WHO WAS THOR NYGAARD?

A. HE WAS THE PRODUCTION MANAGER AT THE TIME.

Q. MR. RIZZO AUTHORIZED MS. NEWTON'S FIRING, DIDN'T HE?

A. YES.

MS. NUGENT: I HAVE NOTHING FURTHER.

THE COURT: ANYTHING WITH RESPECT TO THOSE?

REDIRECT EXAMINATION

BY MR. LAFAYETTE:

Q. YOU WERE SHOWN EXHIBIT 625 AND 106.

TAKING A LOOK AT EXHIBIT 106 --

A. UH-HUH.

Q. THERE ARE COLUMNS THERE, WRITTEN BY, REVIEWED BY, APPROVED
BY?

A. YES.

1 **Q.** ARE ALL OF THOSE PEOPLE IN MARTINEZ?

2 **A.** THEY WERE ALL IN MARTINEZ AT THE TIME THEY REVIEWED IT,
3 YES.

4 **Q.** DOES THIS RELATE TO MARTINEZ SPECIFICALLY?

5 **A.** YES.

6 **Q.** AND DID YOU CONSULT WITH OTHER PEOPLE ON THIS DOCUMENT?

7 **A.** NO.

8 **Q.** OKAY. DO YOU KNOW IF THIS APPLIES TO PUGET SOUND?

9 **A.** NO.

10 **THE COURT:** YOU DON'T KNOW OR IT DOESN'T APPLY?

11 **THE WITNESS:** DOESN'T APPLY.

12 **BY MR. LAFAYETTE**

13 **Q.** DOES IT APPLY TO ANY OF THE OTHER REFINERIES?

14 **A.** NO.

15 **THE COURT:** IS THAT ALL?

16 **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

17 **MS. NUGENT:** NOTHING FURTHER FOR THE PLAINTIFF.

18 **THE COURT:** I HAVE ONE QUESTION FOR YOU. IT'S ON MY
19 TIME. OR MAYBE NOT ONE QUESTION.

20 EXAMINATION

21 WHY DOES ALL OF THIS SAY SHELL OIL PRODUCTS AS OPPOSED TO
22 EQUILON ENTERPRISES?

23 **THE WITNESS:** SHELL OIL PRODUCTS, I BELIEVE, IS THE
24 COMPANY WHICH IS AN ENTITY OF EQUILON BUT I'M NOT QUITE SURE.

25 **THE COURT:** TO YOU KNOW THE DISTINCTION BETWEEN THE

1 || TWO COMPANIES?

2 **THE WITNESS:** I DON'T.

3 **THE COURT:** DO YOU KNOW ANYTHING ABOUT THE
4 RELATIONSHIP OF HOW SHELL OWNS OR MANAGES ITS LEGAL
5 RELATIONSHIP WITH EQUILON?

6 THE WITNESS: NO, I DON'T.

7 **THE COURT:** BUT EVEN THOUGH IT SAYS SHELL OIL
8 PRODUCTS, THESE WERE EQUILON'S POLICIES?

9 **THE WITNESS:** I DON'T -- I CAN'T SAY FOR SURE BECAUSE
10 I DON'T KNOW THAT RELATIONSHIP.

11 **THE COURT:** BUT THESE ARE THE POLICIES THAT
12 CONTROLLED AT THE REFINERY?

14 THE COURT: ALL RIGHT. ANYTHING ON MY QUESTION?

16 MS. NUGENT: NO, YOUR HONOR.

17 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN. NEXT
18 WITNESS.

19 MR. LAFAYETTE: JEFF FISCHER.

20 **THE COURT:** ALL RIGHT. MR. FISCHER, I'LL REMIND YOU,
21 YOU ARE STILL UNDER OATH BECAUSE I DID NOT EXCUSE YOU. I KNEW
22 YOU WERE COMING BACK.

25 (EXHIBIT BINDER HANDED TO WITNESS.)

1 **DIRECT EXAMINATION**

2 **BY MR. LAFAYETTE:**

3 **Q.** GOOD MORNING, MR. FISCHER.

4 **A.** GOOD MORNING.

5 **Q.** WHEN YOU WERE IN OPCEN IN THE TRAINING COURSE, DID THERE
6 COME A TIME WHEN YOU BECAME AWARE -- WELL, MARCH 1, 2016, DID
7 SOMETHING HAPPEN DURING THE CLASS WITH MS. NEWTON?

8 **A.** I WOULD HAVE TO LOOK UP FOR THAT EXACT DATE.

9 **Q.** CAN YOU LOOK AT THE BINDER THAT UP YOU HAVE IN FRONT OF
10 YOU AND TAKE A LOOK AT EXHIBIT 503.

11 **A.** YES.

12 **Q.** WHAT HAPPENED?

13 **A.** THAT WAS OUR FIRST OFFICIAL DAY OF OUR CLASS, AND WE WERE
14 TWO-AND-A-HALF HOURS INTO THE CLASS. CIARA HAD A TEXT
15 MESSAGE, READ HER TEXT. I DON'T EXACTLY REMEMBER WHAT SHE
16 SAID BUT SHE WAS VERY DISTRAUGHT, GOT UP, GRABBED HER STUFF,
17 AND PROCEEDED OUT OF THE CLASSROOM.

18 **Q.** OKAY. WHAT DID YOU DO?

19 **A.** I WENT AFTER CIARA AND WE MET UP IN THE HALLWAY. AND I
20 ASKED HER WHAT HAD HAPPENED AND SHE TOLD ME WHAT HER TEXT SAID
21 HER DAD WAS IN A COMA AND SO SHE HAD TO GO.

22 **Q.** WHAT DID YOU DO THEN?

23 **A.** I DIDN'T HAVE ALL OF EVERYBODY'S PARTICULARS HOW TO
24 COMMUNICATE WITH THEM AND SO ON, SO I ASKED FOR CIARA'S PHONE
25 NUMBER. I GAVE HER MY PHONE NUMBER AND I OFFERED TO DRIVE HER

1 TO THE HOSPITAL BECAUSE SHE WAS EXTREMELY UPSET AND/OR GET HER
2 A TAXI. THAT IS WHAT I COULD COME UP WITH OFF THE TOP OF MY
3 HEAD IN THAT SECOND.

4 **Q.** AND THEN WHAT HAPPENED?

5 **A.** WE EXCHANGED NUMBERS. I SAID PLEASE TEXT ME WITH WHAT IS
6 GOING ON AND CIARA LEFT.

7 **Q.** AND AFTER SHE LEFT, WHAT DID YOU DO?

8 **A.** I ALERTED MY SUPERIORS ABOUT WHAT HAD JUST HAPPENED.

9 **Q.** TAKING A LOOK AT EXHIBIT 503. TELL ME WHAT THAT IS.
10 NOTING --

11 **A.** IT'S A QUICK EXPLANATION OF WHAT HAPPENED IN THE
12 CLASSROOM.

13 **Q.** DID YOU SEND THIS AS AN EMAIL TO ROBERT MULLER, MICHAEL
14 BECK, AND ERIC PEREZ?

15 **A.** I DID.

16 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
17 EVIDENCE, YOUR HONOR.

18 **THE COURT:** ANY OBJECTION?

19 **MS. NUGENT:** NO OBJECTION.

20 **THE COURT:** IT'S ADMITTED.

21 (DEFENDANT'S EXHIBIT 503 RECEIVED IN EVIDENCE)

22 **BY MR. LAFAYETTE:**

23 **Q.** SO WHY DID YOU SEND IT TO THESE THREE INDIVIDUALS?

24 **A.** I HAVE SEVERAL BOSSSES. THESE THREE ARE MY -- MY BOSSSES.
25 THEY WILL HAVE A DIFFERENT FACET ABOUT ME AND MY JOB.

1 Q. ALL RIGHT. AND SO AFTER YOU SENT THIS EMAIL, DID YOU GET
2 RESPONSES BACK FROM YOUR BOSSES?

3 **A.** I DON'T REMEMBER EXACTLY WHO RESPONDED TO THAT. I
4 REMEMBER GETTING A PHONE CALL FROM ERIC LATER ON THAT DAY
5 ASKING ME IF WHAT HAVE I HEARD OR ANYTHING.

6 Q. SO TAKE A LOOK AT EXHIBIT 504. IS THAT AN EMAIL THAT YOU
7 GOT BACK?

8 || A. IT IS AN EMAIL FROM MICHAEL BECK, YES.

9 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
10 INTO EVIDENCE, YOUR HONOR.

11 MS. NUGENT: NO OBJECTION.

12 THE COURT: ADMITTED.

13 (DEFENDANT'S EXHIBIT 504 RECEIVED IN EVIDENCE)

14 (DISPLAYED ON SCREEN.)

15 BY MR. LAFAYETTE:

16 || Q. THAT IS YOUR EMAIL BELOW, RIGHT?

17 | **A.** YES.

18 || Q. THAT'S MR. BECK'S EMAIL?

19 | **A.** CORRECT .

20 Q. SO NOW AFTER YOU DID THAT, DID YOU GET AN EMAIL BACK FROM
21 MR. MULLER? TAKE A LOOK AT 505.

A. YES, I DID.

23 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THAT INTO
24 EVIDENCE, YOUR HONOR.

25 MS. NUGENT: NO OBJECTION.

1 **THE COURT:** ADMITTED.

2 (DEFENDANT'S EXHIBIT 505 RECEIVED IN EVIDENCE)

3 (DISPLAYED ON SCREEN.)

4 **BY MR. LAFAYETTE:**

5 **Q.** ON MARCH 2 -- TAKE A LOOK AT EXHIBIT 506. WHAT IS THAT?

6 **A.** IT'S A NOTE FROM ERIC PEREZ. LOOKS LIKE MOST LIKELY
7 INSTRUCTING TERRY SHELBY AND CHRISTINA.

8 **MR. LAFAYETTE:** OKAY. I WOULD LIKE TO MOVE THIS
9 DOCUMENT INTO EVIDENCE.

10 **MS. NUGENT:** NO OBJECTION.

11 **THE COURT:** ADMITTED.

12 (DEFENDANT'S EXHIBIT 506 RECEIVED IN EVIDENCE)

13 **BY MR. LAFAYETTE:**

14 **Q.** ARE YOU THE PERSON WHO HANDLED HER ATTENDANCE ISSUES
15 MS. NEWTON'S ATTENDANCE ISSUES BACK THEN?

16 **A.** NO. I DON'T -- ERIC IS THE SPECIALIST ON ATTENDANCE
17 ISSUES.

18 **Q.** OKAY. SO NOW AT SOME POINT, DID YOU COME TO UNDERSTAND
19 THAT MS. NEWTON'S FATHER HAD PASSED?

20 **A.** YEAH. I DON'T KNOW IF IT WAS THAT NIGHT OR THE NEXT DAY,
21 I GOT A REALLY GARBLED MESSAGE FROM HER FIANCÉ. SOUNDED LIKE
22 THE WIND WAS HITTING THE PHONE BUT I MADE OUT BITS AND PIECES
23 ABOUT CIARA'S FATHER'S PASSED AWAY.

24 **Q.** CAN YOU ADVISE ANYONE OF WHAT YOU LEARNED? TAKE A LOOK AT
25 507. WHAT IS EXHIBIT 507. IS THAT AN EMAIL?

1 **A.** THAT IS AN EMAIL.

2 **MR. LAFAYETTE:** AND I WOULD LIKE TO MOVE THIS INTO
3 EVIDENCE, YOUR HONOR.

4 MS. NUGENT: NO OBJECTION.

6 (DEFENDANT'S EXHIBIT 507 RECEIVED IN EVIDENCE)

7 (DISPLAYED ON SCREEN.)

8 BY MR. LAFAYETTE:

9 Q. NOW, AFTER THAT EMAIL, AFTER THAT GARBLED MESSAGE, DID YOU
10 HAVE ANY COMMUNICATIONS WITH MS. NEWTON RELATING TO HOW TO
11 HANDLE HER BEREAVEMENT LEAVE?

12 **A.** NO. I DON'T ISSUE THE BEREAVEMENT LEAVE. THAT IS ERIC
13 ISSUES BEREAVEMENT LEAVE. HE IS THE ONE THAT TALKS ABOUT HOW
14 MUCH BEREAVEMENT LEAVE THEY ARE ENTITLED TO ACCORDING TO
15 COMPANY POLICY.

16 Q. TAKE A LOOK AT EXHIBIT 510. IS THAT AN EMAIL FROM
17 MR. PEREZ AT THE BOTTOM TO MS. NEWTON TO -- TO MR. TERRY
18 SHELBY AND MICHAEL BECK AS TO CIARA NEWTON?

19 A. YES.

8. WAS IT FORWARDED TO YOU? AT THE TOP?

A. AT THE VERY TOP, IT WAS FORWARDED TO ME.

22 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
23 INTO EVIDENCE, YOUR HONOR.

24 MS. NUGENT: NO OBJECTION.

25 THE COURT: ADMITTED.

1 (DEFENDANT'S EXHIBIT 510 RECEIVED IN EVIDENCE)

2 **BY MR. LAFAYETTE:**

3 Q. MR. SHELBY TALKED TO CIARA TODAY. PLEASE CODE HER FUNERAL
4 LEAVE FOR 3/2, 3/3. FRIDAY WAS REGULAR DAY OFF AND 3/7, AND A
5 VACATION DAY FOR 3/8.

6 DID YOU MAKE THOSE DECISIONS OR DID ERIC PEREZ MAKE THEM?

7 A. THAT WOULD HAVE BEEN ERIC.

8 Q. NOW, TURN TO TAB 513.

9 DO YOU RECOGNIZE AN EMAIL BELOW -- AN EMAIL HERE FROM ERIC
10 PEREZ TO YOU?

11 A. YES.

12 **MR. LAFAYETTE:** AND I WOULD LIKE TO MOVE THIS
13 DOCUMENT INTO EVIDENCE, YOUR HONOR.

14 **THE COURT:** NO OBJECTION.

15 **MS. NUGENT:** ADMITTED.

16 (DEFENDANT'S EXHIBIT 513 RECEIVED IN EVIDENCE)

17 **BY MR. LAFAYETTE:**

18 Q. AS OF THIS DAY HAD SOME TARDIES START APPEARING FOR
19 MS. NEWTON?

20 **MS. NUGENT:** LEADING.

21 **THE COURT:** OVERRULED.

22 **THE WITNESS:** YES.

23 **BY MR. LAFAYETTE:**

24 Q. HAD YOU COMMUNICATED ANY OF THAT WITH -- TO MR. PEREZ?

25 A. I DID.

1 **Q.** WHY?

2 **A.** THAT IS WHAT I'M SUPPOSED TO DO. ERIC HANDLES EMPLOYEES,
3 ESPECIALLY THE NEWER EMPLOYEES TO SEE IF WE HAVE AN ISSUE. HE
4 WANTS TO KNOW ABOUT ANY TARDIES, ANYTHING GOING ON. JUST LIKE
5 THE DEATH OF HER FATHER. HE WANTS TO KNOW EVERYTHING THAT IS
6 GOING ON.

7 **Q.** OKAY. SO IN THIS EMAIL IS HE GIVING YOU DIRECTION ON WHAT
8 TO DO?

9 **A.** YES. HE WAS WANTING ME TO SIT DOWN WITH CIARA AND GO OVER
10 THE POLICY -- TARDY POLICY. THIS IS WHAT EVERYBODY GETS.

11 **Q.** DID YOU DO THAT?

12 **A.** YES.

13 **Q.** TAKE A LOOK AT THE ON SECOND PAGE THERE, 6.6. DO YOU SEE
14 THAT?

15 **A.** YES.

16 **Q.** EMPLOYEES WHO WORK DAYS SHOULD NOTIFY SUPERVISOR OF AN
17 ABSENCE AT LEAST 30 MINUTES BEFORE REPORTING TIME ON THE FIRST
18 DAY OF ABSENCE. NOW, AFTER MR. PEREZ SENT THIS TO YOU -- TAKE
19 A LOOK AT EXHIBIT 514.

20 DO YOU SEE THAT?

21 **A.** YES.

22 **Q.** THIS IS AN EMAIL STRING. THERE IS ONE AT THE BOTTOM. YOU
23 TO MR. DONNIE GOFF, TERRY SHELBY AND ERIC PEREZ. DO YOU SEE
24 THAT ONE?

25 **A.** YES.

Q. WHY DID YOU SEND THIS TO DONNIE GOFF?

(PAUSE IN THE PROCEEDINGS.)

A. DONNIE MIGHT HAVE BEEN TO DOING THE PAY FOR US AT THAT TIME. THAT'S ALL I CAN THINK OF?

MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS DOCUMENT INTO EVIDENCE, YOUR HONOR. 514.

MS. NUGENT: NO OBJECTION.

THE COURT: ADMITTED.

(DEFENDANT'S EXHIBIT 514 RECEIVED IN EVIDENCE)

(DISPLAYED ON SCREEN.)

BY MR. LAFAYETTE:

Q. IN THIS DOCUMENT, YOU WRITE SHE IS BOUNCING AROUND THE 6:15 A.M., PLUS OR MINUS, MARK DAILY. WE HAD A CHAT ABOUT THAT YESTERDAY THAT THE START TIME IS NO LATER THAN OF 6:15 BUT CLASS STARTS AT 6:00 A.M. NO MORE CAN SHE GO OVER THE 6:15 MARK WITHOUT BEING HELD ACCOUNTABLE PER MY DISCUSSION WITH HER.

NOW, PRIOR TO THIS DATE, HAD THERE BEEN OTHER TIMES WHEN SHE HAD COME IN AFTER 615?

A. I WOULD HAVE TO CHECK MY RECORDS FOR THOSE DATES.

Q. ALL RIGHT. HAD YOU SPOKEN TO HER AS OF MARCH 23RD ABOUT TARDIES?

A. YES.

Q. WAS THAT A NORMAL THING FOR YOU TO DO?

A. AT THE BEGINNING, YES.

1 **Q.** AT SOME POINT DID YOU SIGN OFF ON -- NO. TAKE A LOOK AT
2 EXHIBIT 520. DO YOU HAVE THAT IN FRONT OF YOU?

3 **A.** I DO.

4 **Q.** AND WHAT IS EXHIBIT 520?

5 **A.** IT'S A NOTE TO -- LOOKS LIKE ALL THE TSTL'S AND STL'S,
6 TEMPORARY SHIFT TEAM LEADERS AND SHIFT TEAM LEADERS, AND
7 ROBIN, WHO DOES SOME OF OUR SCHEDULING AND INPUTS FOR THINGS.
8 IT'S THE TEAMS THAT THE NEW HIRES WERE ASSIGNED TO.

9 **Q.** ALL RIGHT. AND SO CIARA WAS --

10 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
11 EVIDENCE, YOUR HONOR?

12 **MS. NUGENT:** NO OBJECTION.

13 **THE COURT:** ADMITTED.

14 (DEFENDANT'S EXHIBIT 520 RECEIVED IN EVIDENCE)

15 **BY MR. LAFAYETTE:**

16 **Q.** DOES THIS INDICATE THAT MS. NEWTON WAS BEING MOVED TO TEAM
17 FOUR?

18 **A.** THAT IS CORRECT.

19 **Q.** I WOULD LIKE TO SHOW YOU EXHIBIT 521.

20 **MR. LAFAYETTE:** CAN YOU PULL UP THAT, PLEASE?

21 **BY MR. LAFAYETTE:**

22 **Q.** DID YOU WRITE THIS EMAIL?

23 **A.** YES.

24 **Q.** DO YOU KNOW IF THE SEVEN IS A TYPO?

25 **A.** I DO NOT KNOW IF THE SEVEN IS A TYPO.

1 **Q.** TAKE A LOOK AT EXHIBIT 524.

2 **THE CLERK:** I AM SORRY. FIVE?

3 **MR. LAFAYETTE:** ACTUALLY, I'LL WITHDRAW IT.

4 **BY MR. LAFAYETTE:**

5 **Q.** LET'S TAKE A LOOK AT 526.

6 **A.** OKAY.

7 **Q.** IS THIS AN EMAIL EXCHANGE BETWEEN YOU AND TERRY SHELBY?

8 **A.** IT IS.

9 **Q.** SO AT THE BOTTOM --

10 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
11 EVIDENCE, YOUR HONOR.

12 **MS. NUGENT:** NO OBJECTION.

13 **THE COURT:** ADMITTED.

14 (DEFENDANT'S EXHIBIT 526 RECEIVED IN EVIDENCE)

15 **BY MR. LAFAYETTE:**

16 **Q.** AT THE BOTTOM OF THIS PAGE, THERE IS AN EMAIL THAT YOU
17 SENT TO TERRY SHELBY. DO YOU SEE THAT?

18 **A.** YES.

19 **Q.** WHY DID YOU SEND THAT?

20 **A.** CIARA CAME TO ME AND SAID SHE WAS NOT PAID CORRECTLY. SO
21 ONE OF THE MOST IMPORTANT THINGS AT WORK IS TO GET PAID
22 CORRECTLY. THAT PART OF MY JOB IS TO MAKE SURE THEY WERE PAID
23 CORRECTLY. SO WE MAKING THINGS CORRECT.

24 **Q.** TAKE A LOOK THE NEXT EXHIBIT 567. IS THIS AN EMAIL YOU
25 WROTE ON APRIL 19, 2016?

1 **A.** YES.

2 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
3 EVIDENCE, YOUR HONOR.

4 **MS. NUGENT:** NO OBJECTION.

5 **THE COURT:** ADMITTED.

6 (DEFENDANT'S EXHIBIT 567 RECEIVED IN EVIDENCE)

7 **BY MR. LAFAYETTE:**

8 **Q.** SO BY -- THIS EMAIL STATES THAT SHE GOES ON VACATION FOR
9 4/23 THROUGH 5/6 AND THEN REPORTING TO CREW FOUR OPCEN NORTH
10 12-HOUR DAYS STARTING MONDAY MAY 9.

11 DO YOU SEE THAT?

12 **A.** I SEE THAT.

13 **Q.** AT THIS POINT IN TIME WHEN SHE GOES ON CREW, IS SHE ANY
14 LONGER PART OF THE TRAINING PROGRAM -- YOUR TRAINING PROGRAM?

15 **A.** NOT MY TRAINING PROGRAM.

16 **Q.** WHAT HAS HAPPENED TO YOU AT THIS POINT IN TIME?

17 **A.** I'M BEING RESTRUCTURED AND I AM GOING TO THE TURNAROUND.

18 **Q.** SO ARE YOU WORKING WITH MS. NEWTON ANY MORE AFTER THIS?

19 **A.** NOT DURING THE TURNAROUND, NO.

20 **Q.** IS SHE IN A TRAINING COURSE WITH YOU AFTER THIS?

21 **A.** NO.

22 **Q.** TAKE A LOOK AT EXHIBIT 529.

23 IS THIS AN EMAIL THAT YOU RECEIVED, OTHER ON APRIL 19,
24 FROM TERRY SHELBY?

25 **A.** YES.

1 || Q. DOES THIS --

2 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE IT INTO
3 EVIDENCE, YOUR HONOR.

4 MS. NUGENT: NO OBJECTION.

THE COURT: ADMITTED.

6 (DEFENDANT'S EXHIBIT 529 RECEIVED IN EVIDENCE)

7 || BY MR. LAFAYETTE:

8 Q. BASED ON THIS EMAIL, WAS IT YOUR UNDERSTANDING THAT WHEN
9 MS. NEWTON CAME BACK FROM HER VACATION, SHE WOULD HAVE NO MORE
10 VACATION DAYS LEFT?

11 **A.** THAT WOULD HAVE BEEN FOR TERRY AND PEREZ TO COME UP WITH
12 THAT.

13 Q. ALL RIGHT. THERE HAS BEEN SOMETHING ABOUT A PARALLEL
14 CHECKLIST TRAINING. DO YOU REMEMBER THAT?

15 | A. YES.

Q. WHAT IS PARALLEL TRAINING?

17 **A.** PARALLEL TRAINING IS IN DEPTH TRAINING WHERE THEY GO OUT
18 TO THE UNIT AND THEY HAVE PERFORM CERTAIN THINGS. THEY WILL
19 GO OUT WITH A SME OR MYSELF AND WE WILL DEMONSTRATE FOR THEM
20 HOW IT'S DONE TO CHANGE OUT FILTERS, TO DO OTHER THINGS AND
21 MAKE THEM FAMILIAR WITH. WE WILL FOLLOW PROCEDURES.

WE'LL GET IN DEPTH WITH EQUIPMENT, THE OIL MIST SYSTEM FOR
THE PUMPS AND TEACH THEM ALL ABOUT IN DEPTH TRAINING ON THOSE
THINGS.

25 Q. CAN ANYBODY DO THIS KIND OF PARALLEL TRAINING?

1 **A.** PEOPLE THAT ARE QUALIFIED CAN HELP DO THE TRAINING ON IT,
2 THEY CANNOT SIGN OFF. A SME, A STL, TSTL OR MYSELF MUST SIGN
3 OFF ON IT.

4 **Q.** ALL RIGHT. AT THE TIME THAT MS. NEWTON DID HER PARALLEL
5 TRAINING, WAS CHRIS SALAS A SME?

6 **A.** HE WAS NOT A SME YET.

7 **Q.** HOW DID YOU COME TO KNOW THAT CHRIS SALAS WAS SIGNING OFF
8 ON HER FORM?

9 **A.** I WAS IN THE SHIFT TEAM LEADERS OFFICE AT THE TIME AND I
10 SAW CHRIS SIGNING THE SHEET OF PAPER OFF. THEY WERE RIGHT BY
11 MY DOOR. AND I KNEW CHRIS WAS NOT A SME AND I SAW HIM SIGNING
12 THOSE THINGS OFF. I RECOGNIZED THE PAPERWORK.

13 **Q.** AND HAD YOU INTERCEDED IN ANY OTHER EVENTS WHEN YOU SAW A
14 NON SME SIGNING THE PARALLEL TRAINING LIST?

15 **A.** CAN YOU REPHRASE THAT, PLEASE?

16 **Q.** I WILL WITHDRAW IT. I WILL WITHDRAW IT. OKAY? WAS --
17 WAS THERE ANY OTHER REASON AS TO WHY YOU -- DID YOU SPEAK TO
18 MS. NEWTON ABOUT THIS?

19 **A.** I APPROACH THEM BOTH AND SAY, HEY, CHRIS, YOU CAN'T SIGN
20 THESE OFF, YOU'RE NOT A SME.

21 **Q.** AND WHAT DID HE SAY?

22 **A.** I DON'T REMEMBER HIM SAYING ANYTHING. IT WAS LIKE OH, YOU
23 CAUGHT ME. OKAY.

24 **Q.** NOW, WHO IS IT THAT CAN DETERMINE WHO IS A SME? IS IT YOU
25 OR SOMEONE ELSE?

1 **A.** THAT WOULD BE OUR OPERATIONS SPECIALIST, EITHER GRAYSON
2 HILDERBRAND OR LLOYD LAWSON.

3 **Q.** AT SOME DID SOMEONE COME TO YOU AND TELL YOU THEY WERE
4 GOING TO MAKE CHRIS SALAS A SME?

5 **A.** GRAYSON, SHORTLY, CAME UP TO ME AND TOLD ME IT WAS ABOUT
6 TIME THAT CHRIS BECAME A SME AND I AGREED.

7 **Q.** AT THAT POINT CHRIS BECOME A SME?

8 **A.** THAT IS CORRECT.

9 **Q.** AND THEN WHAT HAPPENED TO HER PARALLEL TRAINING LIST?

10 **A.** IT WAS FILLED OUT BY CHRIS, RESIGNED EVERYTHING, AND THEN
11 IT CAME WITH HER PAPERWORK.

12 **Q.** ALL RIGHT. NOW, AFTER THAT HAPPENED DID YOU HAVE ANY MORE
13 INVOLVEMENT WITH -- WITHDRAW THAT QUESTION.

14 THIS ISSUE WITH HER SME, DID YOU HAVE -- DID YOU SIGN OFF
15 ON THE DOCUMENT YOURSELF?

16 **A.** I BELIEVE THERE'S A FEW SPOTS ON THERE THAT I HAVE SIGNED
17 OFF BECAUSE WE COVERED THOSE DURING -- WHEN I HAD HER ON
18 TRAINING.

19 **Q.** DID YOU SIGN AFTER THE SME'S HAVE SIGNED?

20 **A.** I DO THE FINAL -- ON THAT PIECE OF PAPER WHOEVER'S HER
21 IMMEDIATE BOSS AT THAT TIME WILL SIGN THAT PAPER. THE FINAL
22 SIGNATURE.

23 **Q.** DID YOU PUT YOUR FINAL SIGNATURE ON THIS AFTER CHRIS SALAS
24 HAD BEEN APPROVED AT AS A SME?

25 **A.** DID I PUT MY FINAL SIGNATURE ON HER DOCUMENT? I'VE DONE

LAYNE - DIRECT / LAFAYETTE

1 HUNDREDS OF THESE. I CAN'T REMEMBER IF MY SIGNATURE WAS THE
2 LAST FOR HERS.

3 Q. ALL RIGHT.

4 **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

5 **THE COURT:** ANY CROSS?

6 **MS. NUGENT:** WE HAVE NO QUESTIONS FOR THIS WITNESS.

7 **THE COURT:** MR. FISCHER, YOU MAY STEP DOWN. YOU ARE
8 EXCUSED, SIR.

9 NEXT WITNESS.

10 **MR. LAFAYETTE:** MS. CHRISTINE LAYNE.

11 **THE COURT:** ALL RIGHT. MS. LAYNE, I DID NOT EXCUSE
12 YOU SO YOU ARE STILL UNDER OATH. UNDERSTAND?

13 **THE WITNESS:** I UNDERSTAND.

14 **THE COURT:** THANK YOU. YOU MAY PROCEED.

15 **MR. LAFAYETTE:** THANKS, YOUR HONOR.

16 **DIRECT EXAMINATION**

17 **BY MR. LAFAYETTE:**

18 Q. MS. LAYNE, THERE IS A DOCUMENT THAT I AM GOING TO SHOW
19 YOU.

20 **MR. LAFAYETTE:** MAY I SHOW IT ON THE SCREEN --

21 **THE COURT:** IS IT IN EVIDENCE?

22 **MR. LAFAYETTE:** IT IS NOT IN EVIDENCE, YOUR HONOR.
23 IT IS EXHIBIT 70 WE SPOKE ABOUT THIS MORNING.

24 **THE COURT:** DO YOU HAVE THAT? DO THE PLAINTIFFS HAVE
25 70 UP?

LAYNE - DIRECT / LAFAYETTE

1 (PAUSE IN THE PROCEEDINGS.)

2 **THE COURT:** MS. NUGENT, YOU HAVE --

3 **MS. NUGENT:** I HAVE 70A, YOUR HONOR.

4 **MR. LAFAYETTE:** I WANT HER TO SEE 70.

5 **THE COURT:** YOU HAVE A COPY OF 70, CORRECT?

6 **MS. NUGENT:** I DO NOT HAVE A COPY OF 70.

7 **THE COURT:** IT IS YOUR EXHIBIT. YOU SHOULD HAVE THE
8 ENTIRE THING.

9 **MS. NUGENT:** THIS IS AN EXHIBIT 70 THAT WE TURNED
10 INTO 70A --

11 **THE COURT:** YOU SHOULD HAVE ALL YOUR EXHIBITS.

12 **MS. NUGENT:** WELL, I DO. I'LL GET IT IN FRONT OF ME.
13 YES.

14 (PAUSE IN THE PROCEEDINGS.)

15 **THE COURT:** LET ME KNOW WHEN YOU HAVE IT IN FRONT OF
16 YOU.

17 **MS. NUGENT:** I HAVE IT IN FRONT OF ME.

18 **THE COURT:** ALL RIGHT. YOU CAN APPROACH.

19 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

20 **BY MR. LAFAYETTE:**

21 **Q.** MS. LAYNE, I'M GOING TO BE VERY CIRCUMSPECT WITH MY
22 QUESTIONS, OKAY?

23 **A.** OKAY.

24 **THE COURT:** I HAVE IT.

25 **BY MR. LAFAYETTE:**

1 **Q.** DO YOU HAVE EXHIBIT 70 IN FRONT OF YOU THERE?

2 **A.** YES.

3 **Q.** DO YOU RECOGNIZE EXHIBIT 70?

4 **A.** YES.

5 **Q.** AND WITHOUT GOING INTO DETAILS, I WANT YOU TO JUST ANSWER
6 A FEW QUESTIONS FOR ME ABOUT THIS DOCUMENT.

7 IS THIS A DOCUMENT IN THE FIRST INSTANCE THE ASSEMBLY OF
8 THIS DOCUMENT, WHO -- WHO ASSEMBLED THESE DOCUMENTS?

9 **A.** I DID.

10 **Q.** AND WHO COPIED THESE DOCUMENTS OR SCANNED THEM?

11 **A.** I SCANNED THEM, YES.

12 **Q.** YOU SCANNED THEM. DID YOU SCAN THEM ALL AT THE SAME TIME?

13 **A.** YES.

14 **Q.** ALL AT THE SAME TIME?

15 **A.** YES.

16 **Q.** WHAT DATE WAS IT THAT YOU SCANNED ALL OF THESE DOCUMENTS?

17 **A.** OCTOBER 31ST.

18 **Q.** WAS THAT AFTER MS. NEWTON HAD BEEN TERMINATED?

19 **A.** YES.

20 **Q.** AND WHEN YOU SCANNED THEM, DID SOMETHING HAPPEN TO THE
21 FEEDER ON THE SCANNER?

22 **A.** YEAH, THE TOP OF THE SCANNER FEEDS THE PAPERS IN AND IT
23 FED IT IN ON A DIAGONAL AND YOU CAN TELL ON THE DOCUMENT WHERE
24 THE PAPER WAS ON THE DIAGONAL.

25 **Q.** SO AS -- IF YOU LOOK THROUGH THIS DOCUMENT, CAN YOU TELL

1 ME WHAT YOU SEE AS YOU LOOK AT EACH PAGE ON THIS DOCUMENT
2 GOING UP TO BATES PAGE 318?

3 **A.** THE TEXT IS SLANTED AND YOU CAN SEE A BLACK LINE ALONG THE
4 RIGHT EDGE OF THE PAPER SHOWING WHERE THE EDGE OF THE PAGE HAD
5 BEEN SCANNED IN.

6 **Q.** NOW, WHEN YOU GET TO PAGE 318 IN THIS DOCUMENT, CAN YOU
7 TELL US WHAT THAT DOCUMENT IS?

8 **A.** IT IS HER PROGRESS REPORT.

9 **Q.** IT'S HER PROGRESS REPORT?

10 **A.** UH-HUH.

11 **Q.** THAT'S A YES?

12 **A.** YES.

13 **Q.** FOR WHAT PERIOD?

14 **A.** IT APPEARS TO BE THE 240-PROGRESS REPORT.

15 **Q.** THE PERSON WHO DID THAT, DID THEY NOTE HOW MANY DAYS THEY
16 HAD BEEN OVER HER? TOP BOX, TOP RIGHT CORNER?

17 **A.** 57 DAYS.

18 **Q.** AND CAN YOU TAKE A LOOK AT THE SECOND PAGE OF THIS
19 DOCUMENT?

20 **A.** YES.

21 **Q.** DOES IT IDENTIFY WHO THE PERSON IS THAT WAS SUPPOSED TO
22 HAVE PREPARED THIS ASSESSMENT?

23 **A.** RICHARD METCALF.

24 **Q.** DOES IT IDENTIFY THERE IN THE BOX, BASED ON YOUR KNOWLEDGE
25 OF THE EMPLOYEE'S PERFORMANCE TO DATE, SHOULD THE INDIVIDUAL

1 CONTINUE AS AN EQUILON EMPLOYEE, AND DOES IT HAVE A BOX
2 CHECKED THERE?

3 **A.** YES.

4 **Q.** ALL RIGHT. NOW, I WOULD LIKE FOR YOU TO TAKE A LOOK AT --
5 SHOW YOU WHAT HAS BEEN MARKED IN EVIDENCE AS EXHIBIT 65.

6 THE DOCUMENT THAT YOU ARE LOOKING AT, I'M TRYING TO PUT IT
7 ON THE SCREEN.

8 **THE COURT:** 65 IS NOT IN EVIDENCE UNLESS I ADMITTED
9 IT TODAY.

10 **MR. LAFAYETTE:** I AM SHOWING ADMITTED.

11 **THE CLERK:** IT WAS UNCLEAR WHETHER IT WAS I.D.'D OR
12 ADMITTED TODAY.

13 **THE COURT:** IT WAS TODAY. IT'S ADMITTED.

14 GO AHEAD.

15 **MR. LAFAYETTE:** THE DOCUMENT YOU SEE IN EXHIBIT 70,
16 IT'S THE SAME DOCUMENT THAT WE SEE --

17 **THE COURT:** YOU CAN SHOW IT. IT IS ADMITTED BUT IT
18 IS NOT SHOWING.

19 **MR. LAFAYETTE:** THERE.

20 (DISPLAYED ON SCREEN.)

21 **BY MR. LAFAYETTE:**

22 **Q.** THE DOCUMENT THAT YOU SEE IN EXHIBIT 70 AT 318 THROUGH
23 319, IS THAT THE SAME DOCUMENT THAT YOU SEE AS EXHIBIT 65?

24 **A.** I'M SORRY. JUST SO I UNDERSTAND WHAT IS ON THE SCREEN IS
25 WHAT IS IN FRONT OF ME?

1 **Q.** YES.

2 **A.** NO.

3 **Q.** NOW, DOCUMENT EXHIBIT 61 WAS ADMITTED INTO EVIDENCE
4 EARLIER TODAY. THE DOCUMENT THAT YOU SEE WITH THE ANOMALY ON
5 THE SCANNED PAGE FROM THE DATE THAT YOU DID THAT, IS THAT THE
6 SAME DOCUMENT AS EXHIBIT 61?

7 **A.** YES. WHAT'S ON THE SCREEN MATCHES WHAT'S IN FRONT OF ME.

8 **Q.** SO LOOKING AT EXHIBIT 61, DO YOU KNOW WHERE THOSE A
9 ANOMALIES ON THE DOCUMENT CAME FROM?

10 **A.** THE ONE ON THE SCREEN, I THINK IT'S FROM THE SCANNING
11 MACHINE.

12 **Q.** WHEN DID YOU DO THAT?

13 **A.** OCTOBER 31ST.

14 **Q.** THAT WAS AFTER MS. NEWTON WAS TERMINATED, RIGHT?

15 **A.** YES.

16 **Q.** NOW, PRIOR TO MS. NEWTON -- A DECISION BEING MADE TO
17 TERMINATE HER -- IN CONNECTION WITH MR. PEREZ, DID YOU DO AN
18 INVESTIGATION OF WHATEVER YOU THOUGHT SHE WAS TALKING ABOUT?

19 **A.** YES.

20 **Q.** DID YOU REACH A CONCLUSION?

21 **A.** YES.

22 **Q.** AND WHAT CONCLUSION DID YOU REACH?

23 **A.** THAT WHEN SHE STATED THAT SHE WAS BEING TREATED DIFFERENT,
24 I WASN'T ABLE TO SUBSTANTIATE IT.

25 **Q.** IT WASN'T SUBSTANTIATED?

1 **A.** YES.

2 **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

3 **MS. NUGENT:** WE HAVE NO QUESTIONS FOR THIS WITNESS.

4 **THE COURT:** ALL RIGHT. YOU'RE EXCUSED.

5 **THE WITNESS:** THANK YOU.

6 **THE COURT:** YOU MAY STEP DOWN. NEXT WITNESS.

7 LET'S GO AHEAD AND TAKE OUR BREAK AT THIS POINT,

8 MR. LAFAYETTE.

9 ALL RIGHT. LADIES AND GENTLEMEN, 15-MINUTE BREAK. THANK

10 YOU.

11 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

12 **THE COURT:** ALL RIGHT. WE WILL STAND IN RECESS FOR
13 15 MINUTES.

14 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

15 (RECESS TAKEN AT 11:45 A.M., RESUMED AT 11:58 A.M.)

16 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

17 **THE CLERK:** REMAIN SEATED. COURT IS IN SESSION.
18 COME TO ORDER.

19 **THE COURT:** ALL RIGHT. LET'S GO ON THE RECORD BEFORE
20 I CALL OUT THE JURY.

21 MR. LAFAYETTE, I AM GOING TO NEED SOME CLARITY AT SOME
22 POINT ON WHOSE POLICIES THESE ARE. I AM STILL CONFUSED AND I
23 DON'T HAVE ANY CLARIFICATION.

24 YOU ARE ASKING PEOPLE IF THEY ARE AN OFFICER AND DIRECTOR,
25 YOU ARE SHOWING ME DOCUMENTS THAT ARE ALL SHELL DOCUMENTS.

LAYNE - DIRECT / LAFAYETTE

1 WELL, WHO WAS THE OFFICER AND DIRECTOR? WHO ARE THE OFFICERS
2 OF THIS COMPANY? WHOSE POLICIES ARE THESE? YOU'RE GOING TO
3 ARGUE THAT THEY ARE YOUR CLIENT'S POLICIES BUT THEY SAY SHELL
4 AND NOT EQUILON. YOU'VE MADE A BIG DEAL ABOUT THIS BUT I
5 DON'T HAVE CLARITY, AND I'M GIVING YOU NOTICE NOW THAT I NEED
6 CLARITY.

7 **MR. LAFAYETTE:** THERE WAS ONE QUESTION WE HAD BEFORE
8 THE JURY CAME IN. I HAVE TWO MORE QUESTIONS FOR MS. LAYNE.

9 THE COURT: OKAY.

10 MR. LAFAYETTE: THANK YOU, YOUR HONOR.

11 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

12 **THE COURT:** OKAY. WE ARE BACK ON THE RECORD AND LET
13 THE RECORD REFLECT THE JURY IS BACK.

14 APPARENTLY MR. LAFAYETTE HAS A COUPLE OF QUESTIONS FOR
15 MS. LAYNE. I AM GOING TO ALLOW HIM TO REOPEN SINCE I EXCUSED
16 HER RIGHT BEFORE THE BREAK.

17 MR. LAFAYETTE: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION RESUMED

19 BY MR. LAFAYETTE:

20 Q. MS. LAYNE, WHAT HAPPENS IF A PROSPECTIVE EMPLOYER, SOMEONE
21 WHO HAS PREVIOUSLY WORKED AT THE REFINERY, CALLS FOR OR TRIES
22 TO OBTAIN REFERENCES?

23 **A.** THEY ARE DIRECTED TO AN EXTERNAL THIRD-PARTY VENDOR CALLED
24 THE WORK NUMBER.

8. OKAY. YOU SAY EXTERNAL THIRD-PARTY VENDOR. WHAT DOES

1 THAT MEAN?

2 **A.** IT'S NOT A SHELL EMPLOYEE OR A SHELL COMPANY.

3 **Q.** OKAY. AND WHEN THEY ASK FOR INFORMATION, WHAT INFORMATION
4 IS PROVIDED TO THEM?

5 **A.** THE ONLY INFORMATION PROVIDED IS START DATE OF EMPLOYMENT
6 AND END DATE OF EMPLOYMENT.

7 **Q.** DO YOU PROVIDE ANY INFORMATION -- IS ANY INFORMATION
8 PROVIDED AS TO THE REASON WHY SOMEONE LEFT THE REFINERY?

9 **A.** NO.

10 **MR. LAFAYETTE:** JUST A SECOND, YOUR HONOR.

11 (PAUSE IN THE PROCEEDINGS.)

12 **MR. LAFAYETTE:** NO FURTHER QUESTIONS, YOUR HONOR.

13 **THE COURT:** ANYTHING ON THAT?

14 **MS. NUGENT:** NO, YOUR HONOR.

15 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN NOW.

16 **THE WITNESS:** THANK YOU.

17 **THE COURT:** NEXT WITNESS.

18 **MR. LAFAYETTE:** ERIC PEREZ.

19 **THE COURT:** ALL RIGHT. MR. PEREZ, I'LL REMIND YOU
20 YOU ARE STILL UNDER OATH. I DID NOT EXCUSE YOU BECAUSE I KNEW
21 YOU WERE COMING BACK.

22 **THE WITNESS:** OKAY.

23 **THE COURT:** YOU MAY PROCEED.

24 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. LAFAYETTE:

Q. MR. PEREZ, I'M GOING TO FOCUS YOU NOW TO THE TIME PERIOD OF JULY OF 2016. ALL RIGHT?

A. OKAY.

Q. AND I WILL SPECIFICALLY TALK TO YOU ABOUT SOME DOCUMENTS,
ALL RIGHT?

CAN YOU TAKE A LOOK AT EXHIBIT 542? IN THE BINDER IN
FRONT OF YOU THERE? DO YOU HAVE IT THERE?

A. THIS ONE JUMPS -- 542.

MS. NUGENT: IT IS NOT IN THIS BINDER.

THE COURT: DO I HAVE A BINDER FOR HIM?

THE CLERK: DO YOU HAVE A WITNESS BINDER?

MR. LAFAYETTE: DO YOU HAVE 544 THERE?

THE WITNESS: IT JUMPS 544.

MR. LAFAYETTE: DO YOU HAVE 544?

THE WITNESS: NO. IT GOES 540 TO 557.

MR. LAFAYETTE: YOUR HONOR, MAY I APPROACH THE

WITNESS?

THE COURT: YOU MAY.

(BINDER HANDED TO WITNESS.)

BY MR. LAFAYETTE:

Q. DO YOU RECOGNIZE EXHIBIT 544?

A. YES, I DO.

Q. WHAT IS THAT?

1 **A.** THIS IS A NOTE FROM CAMERON TO ME ABOUT A COUPLE OF
2 ENTRIES HE WAS GOING TO MAKE INTO CIARA'S PD FILE.

3 **Q.** OKAY.

4 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE EXHIBIT 544 INTO
5 EVIDENCE, YOUR HONOR.

6 **THE COURT:** ANY OBJECTION?

7 **MS. SMALLETS:** NO, YOUR HONOR.

8 **THE COURT:** IT'S ADMITTED.

9 (DEFENDANT'S EXHIBIT 544 RECEIVED IN EVIDENCE)

10 **BY MR. LAFAYETTE:**

11 **Q.** DO YOU KNOW WHY MR. CURRAN WAS ASKING PERMISSION TO PUT
12 THESE IN THE PD FILE?

13 **A.** HE JUST WANT TO BE SURE THAT I LOOKED AT IT BEFORE HE PUT
14 IT IN. HE HAD SOME CONCERN ABOUT CIARA AROUND THE BAKER TANK
15 AND ABOUT A MISSED SHIFT THAT SHE WAS SUPPOSED TO PAY BACK.

16 **Q.** A MISSED SHIFT SHE WAS SUPPOSED TO PAY BACK?

17 **A.** YES, SIR.

18 **Q.** SO HE -- THIS DOCUMENT DETAILS HIS CONCERN?

19 **A.** YES, SIR.

20 **Q.** CAN YOU TURN TO THE SECOND PAGE OF THE EXHIBIT, PLEASE?

21 (DISPLAYED ON SCREEN.)

22 SO NOW TAKE A LOOK AT EXHIBIT 545.

23 **A.** OKAY.

24 **Q.** DO YOU RECOGNIZE THAT DOCUMENT?

25 **A.** I DO. IT'S MY RESPONSE TO CAMERON.

1 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
2 INTO EVIDENCE.

4 MS. SMALLETS: NO, YOUR HONOR.

THE COURT: ADMITTED.

6 (DEFENDANT'S EXHIBIT 545 RECEIVED IN EVIDENCE)

7 (DISPLAYED ON SCREEN.)

8 BY MR. LAFAYETTE:

9 Q. THIS IS WHAT YOU WROTE:

10 LOOKS GOOD, CAMERON. PLEASE CONTINUE TO ASSIST IN HER
11 DEVELOPMENT. PART OF HER DEVELOPMENT WILL BE SOME DIFFICULT
12 CONVERSATIONS WITH HER AND TO LET HER KNOW HOW YOU SEE HER
13 PERFORMANCE UP TO THIS POINT. PLEASE BE TRANSPARENT WITH YOUR
14 CONCERN ABOUT HER AS AN OPERATOR. THESE ARE HEALTHY --

15 **THE COURT:** I CAN'T HEAR YOU, MS. SMALLETS. IF YOU
16 WANT TO OBJECT, YOU NEED TO ASSERT YOURSELF.

17 MS. SMALLETS: OBJECTION, LEADING.

18 **THE COURT:** WELL, POSSIBLY. IS THERE SOME -- CAN WE
19 GET TO A QUESTION?

MR. LAFAYETTE: YES, YOUR HONOR.

21 BY MR. LAFAYETTE:

22 Q. YOU WROTE: THESE ARE HEALTHY CONVERSATIONS TO HAVE. WHY
23 ARE THEY HEALTHY?

24 **A. IT IS JUST A TEAM LEADER BEING HONEST WITH AN OPERATOR**
25 ABOUT PERFORMANCE OR ANY OTHER CONCERNS.

1 **Q.** NOW, TAKE A LOOK AT THE NEXT EXHIBIT, EXHIBIT 546? DO YOU
2 HAVE THAT IN FRONT OF YOU?

3 **A.** YES, SIR.

4 **Q.** WHAT IS THAT?

5 **A.** IT LOOKS LIKE IT IS A NOTE THAT I SENT TO CHRISTINE LAYNE
6 AND CC'D MIKE BECK.

7 **Q.** AND WHAT WAS THE PURPOSE OF THIS COMMUNICATION?

8 **A.** I WAS KEEPING THEM IN THE LOOP WITH THE CAMERON'S CONCERNs
9 ABOUT CIARA'S PERFORMANCE AND HER NOT PAYING BACK THE SHIFT.

10 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
11 INTO EVIDENCE.

12 **THE COURT:** ANY OBJECTION?

13 **MS. SMALLETS:** NO, YOUR HONOR.

14 **THE COURT:** ADMITTED.

15 (DEFENDANT'S EXHIBIT 546 RECEIVED IN EVIDENCE)

16 (DISPLAYED ON SCREEN.)

17 **BY MR. LAFAYETTE:**

18 **Q.** NOW, WHAT IS THE DATE -- IS THE DATE OF THAT DOCUMENT
19 JUNE 18, 2016?

20 **A.** YES, SIR.

21 **Q.** TAKE A LOOK IF YOU WILL AT EXHIBIT 547, WHICH I THINK IS
22 IN EVIDENCE.

23 DO YOU HAVE IT IN FRONT MUCH YOU?

24 **A.** YES.

25 **Q.** WHAT HAPPENED BETWEEN JULY 18 AND JULY 19, SUCH THAT YOU

1 WROTE A NEW EMAIL?

2 **A.** I TOOK A LOOK -- AT THAT TIME I TOOK A LOOK AT CIARA'S PD
3 FILE. THERE WAS A LOT OF OTHER ENTRIES IN THERE THAT HAD ME
4 CONCERNED ALSO.

5 **Q.** ALL RIGHT. NOW, AT THIS POINT IN TIME, WAS IT -- WITHDRAW
6 THAT QUESTION. AT SOME POINT IN TIME DID YOU HAVE A -- COME
7 TO AN UNDERSTANDING THAT GUY ROZAR AND MR. CURRAN HAD MET WITH
8 MS. NEWTON?

9 **A.** I BELIEVE THEY MET WITH CIARA ON JULY 22ND.

10 **Q.** AND DID THEY COMMUNICATE -- DID EITHER ONE OF THEM
11 COMMUNICATE BACK TO YOU WITH REGARD TO WHAT THEY HAD LEARNED?

12 **A.** THEY DID.

13 **Q.** AND WAS IT ORAL OR WRITTEN COMMUNICATION?

14 **A.** THEY HAD SET ME SENT ME A SUMMARY OF THEIR COMMUNICATION
15 WITH CIARA VIA EMAIL, I BELIEVE.

16 **Q.** VIA EMAIL.

17 CAN YOU TAKE A LOOK AT EXHIBIT 551? IS THAT ONE OF THE
18 DOCUMENTS THAT -- DO YOU HAVE IT THERE?

19 **A.** YES, SIR.

20 **Q.** IS THAT AN EMAIL FROM A GUY ROZAR TO YOU?

21 **A.** YES, IT IS.

22 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THAT DOCUMENT
23 INTO EVIDENCE, YOUR HONOR.

24 **MS. SMALLETS:** OBJECTION, HEARSAY.

25 **THE COURT:** OVERRULED.

1 (DEFENDANT'S EXHIBIT 551 RECEIVED IN EVIDENCE)

2 **MR. LAFAYETTE:** CAN YOU TAKE A LOOK AT EXHIBIT 554?

3 **THE COURT:** I DON'T HAVE 554.

4 **MR. LAFAYETTE:** I WILL SKIP THAT, YOUR HONOR.

5 **BY MR. LAFAYETTE:**

6 Q. SO NOW TAKE A LOOK AT 556. IS THAT AN EMAIL THAT YOU
7 WROTE?

8 A. YES, SIR.

9 Q. WHO DID YOU WRITE THIS EMAIL TO?

10 A. TO CHRISTINE LAYNE, HR REPRESENTATIVE, AND MIKE BECK, MY
11 MANAGER?

12 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
13 INTO EVIDENCE, YOUR HONOR.

14 **MS. SMALLETS:** NO OBJECTION.

15 **THE COURT:** ADMITTED.

16 (DEFENDANT'S EXHIBIT 556 RECEIVED IN EVIDENCE)

17 **BY MR. LAFAYETTE:**

18 Q. NOW, WHAT ARE YOU ASKING MS. LAYNE TO GET FOR YOU?

19 A. THE GATE LOGS FOR THE FOUR NEW HIRES THAT WERE TRAINING IN
20 OPCEN NORTH.

21 Q. WHY DO YOU WANT THE GATE LOGS?

22 A. THERE WAS AN ALLEGATION THAT WE WERE TREATING -- WE
23 WEREN'T CONSISTENT WITH TARDIES WITH THE FOUR NEW HIRES IN
24 OPCEN NORTH.

25 Q. HOW WOULD THE GATE LOGS HELP YOU?

1 **A.** THEY WOULD TELL ME EXACTLY WHEN THE OPERATORS WERE
2 CLOCKING IN TO THE REFINERY.

3 **Q.** OKAY.

4 **A.** IT'S A TIME STAMP.

5 **Q.** ALL RIGHT. DID YOU GET A RESPONSE BACK TO FROM MS. LAYNE?

6 **A.** I DID.

7 **Q.** DID YOU REACH -- TAKE A LOOK AT EXHIBIT 557. DO YOU HAVE
8 IT THERE?

9 **A.** YES, SIR.

10 **Q.** IS THAT AN EMAIL FROM YOU TO MR. FISCHER?

11 **A.** YES.

12 **Q.** WHAT IS THE DATE OF THAT?

13 **A.** JULY 25TH.

14 **THE COURT:** STICK NEXT TO THE MIC, PLEASE,
15 MR. LAFAYETTE.

16 **BY MR. LAFAYETTE:**

17 **Q.** JULY 25TH?

18 **A.** YES, SIR.

19 **Q.** AND WHAT ARE YOU TRYING TO DO WITH THIS EMAIL?

20 **A.** I WANTED TO BE SURE THE EXPECTATION ON START TIME FROM
21 JEFF FISCHER TO THE FOUR NEW HIRES WAS CLEAR.

22 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
23 INTO EVIDENCE, YOUR HONOR.

24 **MS. SMALLETS:** NO OBJECTION.

25 **THE COURT:** ANY OBJECTION?

1 MS. SMALLETS: NO, YOUR HONOR.

3 (DEFENDANT'S EXHIBIT 557 RECEIVED IN EVIDENCE)

4 || BY MR. LAFAYETTE:

5 Q. NOW, DID YOU GET A RESPONSE -- TAKE A LOOK AT 559. DID
6 YOU GET A RESPONSE BACK FROM MR. FISCHER?

7 **A.** YES, SIR.

8 Q. IS THIS THE RESPONSE?

9 || A. YES.

10 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
11 INTO EVIDENCE, YOUR HONOR.

12 MS. SMALLETS: NO OBJECTION.

13 || THE COURT: ADMITTED.

14 (DEFENDANT'S EXHIBIT 559 RECEIVED IN EVIDENCE)

15 BY MR. LAFAYETTE:

Q. YOU INDICATED THE START TIME WAS WHAT?

17 **A.** START TIME IS 6:00 A.M. TO 6:00 P.M. IF YOU ARE LATE, YOU
18 NEED TO CALL 5169 STL OR TSTL.

19 Q. YOU HAD A QUESTION FOR HIM, DIDN'T YOU?

20 **A.** YES, SIR.

21 || Q. WHAT WAS YOUR QUESTION?

22 **A.** WERE THEY ON A 9/80 OR 5/8 SCHEDULE? WERE THEY REQUIRED
23 TO BE DRESSED IN REDS WHEN THEY WERE ON THE DAY SHIFT
24 SCHEDULE.

25 || Q. TAKE A LOOK AT 560, EXHIBIT 560.

1 DID YOU GET A RESPONSE?

2 **A.** YES, SIR.

3 **Q.** WHAT DID HE ADVISE YOU?

4 **A.** THEY WERE INSTRUCTED 6:00 A.M. ON A 9/80, DRESSED AND
5 READY TO GO, START WAS 6:00 A.M. AND GO HOME AT 3:30.

6 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
7 IN.

8 **MS. SMALLETS:** NO OBJECTION.

9 **THE COURT:** ALL RIGHT. ADMITTED.

10 (DEFENDANT'S EXHIBIT 560 RECEIVED IN EVIDENCE)

11 **BY MR. LAFAYETTE:**

12 **Q.** SO NOW TAKE A LOOK AT 567, EXHIBIT 567. DO YOU HAVE IT
13 THERE?

14 **A.** YES, SIR.

15 **Q.** AND IS THAT AN EMAIL EXCHANGE BETWEEN YOU AND CAMERON
16 CURRAN?

17 **A.** YES, SIR. YES.

18 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS INTO
19 EVIDENCE, YOUR HONOR.

20 **MS. SMALLETS:** NO OBJECTION.

21 **THE COURT:** ADMITTED.

22 (DEFENDANT'S EXHIBIT 567 RECEIVED IN EVIDENCE)

23 **BY MR. LAFAYETTE:**

24 **Q.** SO WHAT ARE YOU ASKING ABOUT HERE?

25 **A.** THERE WAS A TASK THAT THE OPERATORS DO ON A CRITICAL PIECE

1 OF EQUIPMENT THEY CALL BUMPING THE PUMP.

2 I WAS ASKING IF SHE WAS ACTUALLY BUMPING THE PUMP AND IS
3 IT A TASK THAT THE OPERATORS DOCUMENT THAT THEY PERFORMED IN
4 THIS THING WE CALL INTELLITRAK, WHICH IS A HAND-HELD MACHINE
5 THAT THEY ENTER THEIR READINGS INTO.

6 Q. DID YOU GET A RESPONSE BACK FROM MR. CAMERON CURRAN?

7 A. YES, SIR.

8 Q. WHAT DID HE -- IS THIS -- DOES THIS DOCUMENT REFLECT HIS
9 RESPONSE?

10 A. YES.

11 Q. TAKE A LOOK AT EXHIBIT 569. IS THAT A RESPONSE EMAIL FROM
12 YOU TO CAMERON CURRAN?

13 A. YES.

14 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
15 INTO EVIDENCE, YOUR HONOR.

16 **MS. SMALLETS:** NO OBJECTION.

17 **THE COURT:** ADMITTED.

18 (DEFENDANT'S EXHIBIT 569 RECEIVED IN EVIDENCE)

19 **BY MR. LAFAYETTE:**

20 Q. YOU WROTE: THANK YOU. DID SHE SAY -- NO.

21 SHE WAS PUTTING YES INTO THE INTELLITRAK. IS THAT WHAT
22 YOU WROTE?

23 A. YES.

24 Q. WHY WAS THAT IMPORTANT TO YOU?

25 A. I WANTED TO KNOW IF SHE WAS FALSIFYING DOCUMENTS OR TASKS

1 THAT'S A CRITICAL PART OF AN OPERATOR'S ROUNDS.

2 Q. PLEASE TAKE A LOOK AT EXHIBIT 570. DO YOU HAVE IT THERE?

3 A. YES.

4 Q. IS THAT AN EMAIL EXCHANGE FURTHER TO THIS SUBJECT BETWEEN
5 YOU AND MR. CAMERON CURRAN?

6 A. YES.

7 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
8 INTO EVIDENCE, YOUR HONOR.

9 **MS. SMALLETS:** NO OBJECTION.

10 **THE COURT:** ADMITTED.

11 (DEFENDANT'S EXHIBIT 570 RECEIVED IN EVIDENCE)

12 **BY MR. LAFAYETTE:**

13 Q. WOULD YOU FOCUS ON THE HIGHLIGHTED LANGUAGE THERE? WHAT
14 DOES THIS MEAN: THIS SUPPORTS THE LOGIC THAT SHE'S FALSIFYING
15 DOCUMENTS.

16 WHAT DOES THAT MEAN?

17 A. WHAT HIGHLIGHTED -- I AM SORRY.

18 Q. IF YOU LOOK AT THE SCREEN. I HIGHLIGHTED SOME LANGUAGE.
19 CAN YOU SEE IT?

20 A. IT'S BLANK.

21 Q. THERE.

22 (DISPLAYED ON SCREEN.)

23 CAN YOU SEE IT NOW?

24 A. I CAN SEE IT. YOU WANT ME TO READ IT?

25 Q. PLEASE.

1 **A.** OKAY. (READING)

2 THANK YOU. THIS SUPPORTS THE LOGIC THAT SHE'S FALSIFYING
3 DOCUMENTS. I CAN'T PROVE THAT SHE DIDN'T PULL THE DRAEGERS,
4 BUT IN THIS CASE WE HAVE DOCUMENTED PROOF BY HER SAYING YES IN
5 INTELLITRAK THAT SHE WAS BUMPING THE PUMP BUT IN REALITY SHE
6 WASN'T. THANK YOU.

7 **Q.** WHY IS THAT IMPORTANT TO YOU?

8 **A.** THIS IS A CRITICAL TASK OPERATORS SHOULD BE DOING. AND
9 ALSO SHE WAS SAYING SHE WAS DOING IT AND WASN'T.

10 **Q.** TAKE A LOOK AT EXHIBIT 574. DO YOU HAVE IT?

11 **A.** YES, SIR.

12 **Q.** TELL ME WHAT THIS IS.

13 **A.** STARTING WITH TARDIES?

14 **Q.** NO. TELL ME -- IS THIS AN EMAIL?

15 **A.** YEAH. THIS IS AN EMAIL FROM ME TO -- IT DOESN'T SAY WHO I
16 SENT THIS ONE TO.

17 **Q.** WHAT IS THE -- TELL ME WHAT THIS DOCUMENT IS SUPPOSED TO
18 BE.

19 **A.** I WAS PREPARING MY TALKING POINTS FOR WHEN I MEET CIARA ON
20 AUGUST 2ND, TO GO THROUGH SOME PERFORMANCE ISSUES, SOME RED
21 FLAGS WE HAD AROUND PERFORMANCE. WE ALSO WERE GOING TO GO
22 OVER THE TARDIES, THE GATE LOGS HER COMING THROUGH THE GATE
23 TARDY, AND ALSO WANTED HER TO GIVE HER THE OPPORTUNITY TO
24 BRING TO ME AND LOOK INTO -- INVESTIGATE ANY KIND OF
25 ALLEGATIONS THAT SHE WAS SAYING.

1 **Q.** AND HOW DID YOU -- THERE IS A DOCUMENT HERE ON PAGE 2097.
2 DO YOU SEE 2097 BOTTOM RIGHT CORNER?

3 **A.** YES, SIR.

4 **Q.** WHO PREPARED THAT?

5 **A.** THAT WAS ME.

6 **Q.** WHAT DO YOU USE TO PREPARE THAT?

7 **A.** THE GATE LOGS. FROM THE TIME STAMP WHEN CIARA WOULD CLOCK
8 INTO THE REFINERY.

9 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
10 INTO EVIDENCE, YOUR HONOR.

11 **MS. SMALLETS:** NO OBJECTION.

12 **THE COURT:** ADMITTED.

13 (DEFENDANT'S EXHIBIT 574 RECEIVED IN EVIDENCE)

14 **THE CLERK:** I'M SORRY AND THE NUMBER IS?

15 **THE COURT:** 274.

16 **MR. LAFAYETTE:** 574.

17 **THE COURT:** 574.

18 **BY MR. LAFAYETTE:**

19 **Q.** I WANT TO TAKE YOUR ATTENTION TO PAGE 2097.

20 DO YOU SEE THAT?

21 **A.** YES, SIR.

22 (DISPLAYED ON SCREEN.)

23 **Q.** NOW, WHAT DOES THE YELLOW THINGS MEAN HERE?

24 **A.** THOSE WERE ANYTIME CIARA WAS CLOCKED INTO THE REFINERY,
25 6:15 OR GREATER.

1 **Q.** NOW, THERE'S SOMETHING HERE BETWEEN ON MARCH 22, DO YOU
2 SEE THAT? WITH AN ARROW OR RED MARK AND AN ARROW?

3 **A.** YES, SIR.

4 **Q.** SAYS TARDY ON TIME CARD. WHAT DOES THAT MEAN?

5 **A.** SO THE SHIFT TEAM LEADERS WOULD FILL IN A TIME CARD FOR
6 THE OPERATORS AND SEND TO PAYROLL. THEY WERE -- ON THE TIME
7 CARD, SHE WAS ACTUALLY MARKED TARDY.

8 **Q.** ALL RIGHT. I WANT TO MOVE DOWN HERE TO APRIL 7. DO YOU
9 SEE APRIL 7 THERE?

10 **A.** YES, SIR.

11 **Q.** AND APRIL 7, WHAT DOES IT SAY SHE CAME IN AS?

12 **A.** 6:01.

13 **Q.** SO WAS SHE TARDY ON APRIL 7?

14 **A.** NO, SHE WASN'T.

15 **Q.** OKAY. BUT YOU SAY HERE TARDY ON TIME CARD -- YOU SEE THE
16 ARROW THAT YOU HAVE TO THE 6:01?

17 **A.** YEP.

18 **Q.** TELL ME WHAT YOU ARE TRYING TO ACCOMPLISH HERE.

19 **A.** SHE WAS TARDY ON APRIL 8TH. I BELIEVE IT WAS A TYPO. IN
20 THE PD FILE IT WAS DOCUMENTED APRIL 7TH, BUT IT SHOULD HAVE
21 ACTUALLY SAID APRIL 8TH.

22 **Q.** WAS SHE LATE ON APRIL 8?

23 **A.** YES, SIR.

24 **Q.** HOW LATE WAS SHE?

25 **A.** IF YOU -- SHE WAS 46 MINUTES LATE BUT WE DON'T REALLY --

1 WE DIDN'T COUNT IT UNTIL AFTER 6:15.

2 Q. ALL RIGHT.

3 A. 31 MINUTES.

4 Q. SO THEN THERE IS AN APRIL 9. OKAY? AND IT HAS AN AQUA
5 COLOR. I THINK THAT'S WHAT THAT COLOR IS. 6:15. WHAT IS
6 THAT AQUA COLOR?

7 A. SO WHAT I DID IS, IF... IF IT WAS THEIR SCHEDULED DAY OFF
8 OR IF IT WAS THEIR SCHEDULED -- IF IT WAS THEIR SCHEDULED DAY
9 OFF OR THERE WAS NO INSTRUCTOR, I DIDN'T COUNT THOSE DAYS
10 SINCE THERE WAS NO INSTRUCTOR.

11 WE DIDN'T DOCK HER A TARDY FOR APRIL 9TH. IT WAS A
12 SATURDAY, OR APRIL 15TH, THAT WAS HER FRIDAY DAY OFF.

13 Q. OKAY. YOU STOPPED AT APRIL 15, WHY?

14 YOU HAVE A -- I TAKE IT BACK. YOU STOPPED AT APRIL 15 AND
15 THEN YOU WENT TO JULY 22. WHY DID YOU GO TO JULY 22?

16 A. THE NEW HIRES WERE GOING BACK ON SHIFT, I BELIEVE,
17 SOMETIME IN APRIL. AND THEN THE JULY 22, SHE WAS -- SHE WAS
18 ALREADY ON SHIFT, IF I REMEMBER CORRECTLY. IT WAS THE DAY
19 THAT, I BELIEVE, GUY ROZAR AND CAMERON TALKED TO HER AND SHE
20 WAS TARDY ON THAT DAY.

21 Q. ALL RIGHT. DID YOU COMPARE THE GATE LOGS FOR THE OTHER
22 THREE PEOPLE IN THE TRAINING CLASS?

23 A. YES, I DID.

24 Q. I'M GOING TO TAKE YOU BACK DOWN TO 2096.

25 (DISPLAYED ON SCREEN.)

1 SEE 2096 THERE?

2 **A.** YES, SIR.

3 **Q.** TELL ME WHAT WE ARE LOOKING AT NOW.

4 **A.** THESE ARE MY FINDINGS WITH THE TARDIES.

5 **Q.** SO WHAT DID YOU FIND AFTER GOING THROUGH THE GATE LOGS
6 WITH REGARD TO CIARA?

7 **A.** FROM THE TIME THAT WE COUNTED FROM MARCH TO APRIL, SHE WAS
8 TARDY SIX TIMES. WE ONLY COUNTED IF IT PAST -- IF IT WAS
9 6:15 OR GREATER.

10 **Q.** OKAY. WHAT DID YOU FIND WITH REGARD TO THE OTHER THREE
11 PEOPLE?

12 **A.** THE OTHER THREE HIRES, TWO WEREN'T TARDY AT ALL AND WE
13 HAVE ONE TARDY ONCE. THERE WERE A TOTAL OF SEVEN TARDIES.

14 **Q.** I'M LOOKING AT THE ONE, TWO, THREE, FOURTH BULLET DOWN AND
15 THERE IS SOMETHING ABOUT DONUTS. DO YOU SEE THAT?

16 **A.** YES, SIR.

17 **Q.** CAN YOU READ THAT FOR US PLEASE?

18 **A.** (READING)

19 CIARA STATED THAT OTHER TRAINEES CAME IN LATE AND DIDN'T
20 GET WRITTEN UP. SHE SAID IT ISN'T FAIR THAT OTHER PEOPLE CAN
21 COME IN LATE AND NOT GET WRITTEN UP IF THEY BRING IN DONUTS.
22 THIS STATEMENT IS NOT CONSISTENT IS THE OTHER THREE NEW HIGHER
23 GATE LOGS.

24 **Q.** SO SHE SAID THEY DIDN'T GET WRITTEN UP BECAUSE OF DONUTS,
25 RIGHT?

1 **A.** YES.

2 **Q.** DID YOU NOTE THAT -- LOOK AT THE FIFTH -- LAST BULLET,
3 WHAT ARE YOU SAYING THERE?

4 **A.** (READING)

5 PD ENTRIES ON TARDIES ARE DOCUMENTED BELOW. I FEEL THE
6 4/7 IS A TYPO AND SHOULD BE READ 4/8/16.

7 **Q.** THEREAFTER, DID YOU MEET WITH MS. NEWTON ON OR ABOUT THE
8 2ND OF AUGUST?

9 **A.** YES, SIR.

10 **Q.** PRIOR TO THAT DID YOU HAVE A CONVERSATION WITH MS. NEWTON
11 TO SET UP THE CALL -- THE MEETING?

12 **A.** I BELIEVE I TOLD HER I WAS GOING TO SEE HER BUT I'M NOT A
13 HUNDRED PERCENT SURE.

14 **Q.** AT ANY POINT IN TIME DID SHE TELL YOU THAT SHE HAD SOME
15 NOTES THAT SHE WOULD BRING?

16 **A.** SHE MAY HAVE BUT I JUST DON'T RECALL.

17 **MR. LAFAYETTE:** THIS IS NOT IN YOUR BINDER, YOUR
18 HONOR, BUT I'M GOING TO ASK THE WITNESS TO TAKE A LOOK AT A
19 DOCUMENT PREVIOUSLY MARKED AS EXHIBIT 573.

20 **THE COURT:** 573?

21 **MR. LAFAYETTE:** YES.

22 **THE COURT:** ALL RIGHT. PLAINTIFF, DO YOU HAVE YOUR
23 COPY?

24 **MR. LAFAYETTE:** I THINK IT HAS BEEN ADMITTED. IT IS
25 ADMITTED INTO EVIDENCE.

THE COURT: OKAY. THEY JUST NEED A COPY BEFORE YOU START ASKING QUESTIONS.

MR. LAFAYETTE: OKAY.

THE COURT: 573?

MR. LAFAYETTE: YES.

MS. NUGENT: THIS ONE?

THE COURT: DO YOU HAVE IT, MS. SMALLETS.

MS. SMALLETS: YES.

THE COURT: ALL RIGHT. PROCEED.

(DISPLAYED ON SCREEN.)

BY MR. LAFAYETTE:

Q. TAKE A LOOK AT EXHIBIT 573. THIS IS AN EMAIL DATED AUGUST 1, 2016.

DID YOU WRITE THIS EMAIL?

A. YES, I DID.

Q. THE LAST SENTENCE, CAN YOU READ IT?

A. (READING)

SHE HAS NOTES SHE HAS BEEN TAKING OF INEQUALITY THAT SHE
WILL BRING IN.

Q. NOW, WHEN SHE SAID "INEQUALITY", DID SHE SAY ANYTHING OTHER THAN INEQUALITY?

A. NO.

Q. WHEN YOU WENT TO THE MEETING ON THE 2ND, DID SHE BRING ANY NOTES?

A. NO.

1 **Q.** OKAY. SHOW YOU ANOTHER DOCUMENT WHICH I THINK HAS BEEN
2 ADMITTED INTO EVIDENCE EXHIBIT 574 -- 575.

3 **THE COURT:** 575 IS ADMITTED.

4 **MR. LAFAYETTE:** IT'S IN?

5 **THE CLERK:** YES.

6 **MR. LAFAYETTE:** THANK YOU.

7 **THE CLERK:** I DIDN'T KNOW WHICH NUMBER.

8 **MR. LAFAYETTE:** 575.

9 **THE COURT:** MS. SMALLETS?

10 **MS. SMALLETS:** YES.

11 **THE COURT:** GO AHEAD.

12 **BY MR. LAFAYETTE:**

13 **Q.** DO YOU HAVE EXHIBIT 575 THERE IN THE BINDER?

14 **A.** YES.

15 **Q.** HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?

16 **A.** NO.

17 FROM CIARA?

18 **Q.** YES.

19 **A.** NO. THE ONE THAT I'M LOOKING AT IS AN EMAIL FROM CIARA TO
20 CIARA.

21 **Q.** DID SHE BRING IT TO THE MEETING ON THE 2ND?

22 **COURT REPORTER:** EXCUSE ME. COULD YOU REPEAT THAT
23 ANSWER? WHAT I'M LOOKING AT IS AN EMAIL FROM....

24 **THE WITNESS:** WHAT I'M LOOKING AT IS AN EMAIL FROM
25 CIARA TO CIARA. SHE DID NOT BRING THIS TO THE MEETING.

1 **BY MR. LAFAYETTE:**

2 **Q.** OKAY.

3 NOW, AT THIS MEETING DID CIARA NEWTON EVER SAY THAT SHE
4 THOUGHT SHE WAS BEING TREATED DIFFERENTLY BECAUSE SHE IS A
5 WOMAN?

6 **MS. SMALLETS:** OBJECTION, LEADING.

7 **THE COURT:** SUSTAINED.

8 **BY MR. LAFAYETTE:**

9 **Q.** DID MS. NEWTON BRING UP HER GENDER AT THIS MEETING?

10 **A.** NO. NEVER.

11 **Q.** NOW, AT THE END OF THIS MEETING THAT YOU HAD WITH HER, DID
12 YOU HAVE AN UNDERSTANDING AS TO WHAT WAS SUPPOSED TO HAPPEN
13 NEXT?

14 **A.** YES, I DID.

15 **Q.** WHAT WAS YOUR UNDERSTANDING?

16 **A.** PART OF THAT MEETING OR PART OF THE PURPOSE OF THAT
17 MEETING, THERE WERE SOME ALLEGATION AROUND SETTING TRAPS AND
18 STUFF LIKE THAT. I WANTED TO KNOW WHAT KIND OF TRAPS, WHO WAS
19 THERE, SO I COULD LOOK INTO IT. I ASKED CIARA AT THAT TIME
20 BECAUSE SHE GAVE ME SOME INFORMATION, WHICH SHE DIDN'T. SHE
21 SAID I WAS GOING ON VACATION. I SAID OKAY. AND SHE WAS GOING
22 ON HER DAYS OFF. WHEN YOU COME BACK FROM DAYS OFF AND I COME
23 BACK FROM VACATION, I'LL COME BACK AND TALK TO YOU AND GET
24 THIS INFORMATION YOU SAID YOU WOULD GIVE US.

25 **Q.** SO DID YOU DO THAT?

1 **A.** YES, I DID. I DID THAT ON AUGUST 29TH, I BELIEVE.

2 **Q.** ON AUGUST 29. I THINK WE TALKED ABOUT THAT ALREADY. SO
3 AT THE AUGUST 29 MEETING, DID SHE GIVE YOU ANYTHING?

4 **THE COURT:** BY YOUR MIC, PLEASE.

5 **BY MR. LAFAYETTE:**

6 **Q.** AT THE AUGUST 29 MEETING, DID SHE GIVE YOU ANYTHING?

7 **A.** NO, SHE DIDN'T.

8 **Q.** DID SHE REVEAL ANY NAMES TO YOU?

9 **A.** NO, SHE DIDN'T.

10 **Q.** SO AT THAT POINT IN TIME, WHAT INFORMATION DID YOU HAVE
11 REGARDING HER CLAIM THAT TRAPS HAD BEEN SET UP FOR HER?

12 **A.** I HAD NOTHING.

13 **Q.** WHAT INFORMATION DID HAVE YOU REGARDING HER CLAIM THAT SHE
14 HAD BEEN TREATED DIFFERENTLY BECAUSE OF HER ATTENDANCE?

15 **A.** I HAD THE GATE LOGS.

16 **Q.** WHAT INFORMATION DID YOU HAVE TO HER CLAIM THAT CERTAIN
17 PEOPLE WERE BEING WRITTEN UP AND OTHER PEOPLE WERE NOT?

18 **A.** I HAD NOTHING.

19 **Q.** SO NOW, SEPTEMBER, DID YOU DO ANYTHING TO TRY AND FIND OUT
20 IF THERE WAS ANYTHING MORE TO WHAT MS. NEWTON WAS CLAIMING?

21 **A.** WE DIDN'T HAVE MUCH -- WE DIDN'T HAVE NOTHING TO GO ON BUT
22 WE INTERVIEWED CAMERON AND JEFF FISCHER.

23 **Q.** WHO INTERVIEWED THEM?

24 **A.** I BELIEVE I WAS IN BOTH OF THEM AND I FORGOT WHO WAS WITH
25 ME. I DON'T RECALL WHO WAS WITH ME.

1 **Q.** OKAY. DID YOU FIND ANYTHING IN THOSE INTERVIEWS THAT
2 INDICATED THAT TRAPS HAD BEEN SET?

3 **A.** NO.

4 **Q.** DID YOU FIND ANYTHING IN THOSE INTERVIEWS THAT INDICATED
5 THAT SHE HAD SOMEHOW BEEN TREATED DIFFERENTLY THAN OTHERS?

6 **A.** NO.

7 **Q.** DID YOU SHARE THE RESULTS OF YOUR INTERVIEWS WITH ANYONE?

8 **A.** I BELIEVE I SHARED THEM WITH CHRISTINE LAYNE FROM HR AND
9 MIKE BECK, MY MANAGER.

10 **Q.** ALL RIGHT. AND AFTER YOU DID THAT, WHAT HAPPENED NEXT
11 WITH REGARD TO MS. NEWTON?

12 **A.** IN SEPTEMBER, SHE WAS EVENTUALLY TERMINATED BUT I DON'T
13 KNOW THE DATE THAT SHE WAS TERMINATED.

14 **Q.** ALL RIGHT. DID YOU HAVE THE AUTHORITY TO MAKE THE
15 DECISION TO TERMINATE HER ON YOUR OWN?

16 **A.** NO.

17 **Q.** DID... IN ADDITION -- DID YOU DO ANYTHING TO GO TRY AND
18 LOOK INTO THESE VARIOUS ISSUES OF HER OTHER THAN TALK TO
19 MR. CAMERON CURRAN AND MR. FISCHER?

20 **A.** I DON'T RECALL.

21 **Q.** OKAY. I WILL SHOW YOU A COUPLE OF DOCUMENTS AND I AM
22 GOING TO ASK -- ASK YOU WHAT I'M LOOKING AT. OKAY?

23 CAN YOU TAKE A LOOK AT EXHIBIT 585. DO YOU HAVE IT THERE
24 IN FRONT OF YOU?

25 **A.** I -- YES, I DO.

Q. TELL ME WHAT THAT IS.

A. SO THE LAST -- THE LAST EMAIL WAS FROM JEFF FISCHER TO ME.
AND IT WAS -- THE SUBJECT WAS CIARA.

Q. AND IS HE TRANSMITTING SOMETHING TO YOU?

A. YES.

Q. WHAT IS HE TRANSMITTING?

A. SOME NOTES THAT HE HAD AROUND -- WHEN CIARA'S FATHER HAD PASSED, IT LOOKS LIKE. AND THAT IS THE ONLY THING I SEE HERE.

MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS DOCUMENT

INTO EVIDENCE, YOUR HONOR. EXHIBIT 585?

MS. SMALLETS: NO OBJECTION.

THE COURT: 585 IS ADMITTED.

(DEFENDANT'S EXHIBIT 585 RECEIVED IN EVIDENCE)

BY MR. LAFAYETTE:

Q. TAKE A LOOK AT 586. TELL ME WHAT THAT IS.

A. THIS IS ANOTHER NOTE FROM JEFF FISCHER TO MYSELF AROUND --
SUBJECT CIARA NEWTON.

Q. AND WITH REGARD TO THIS DOCUMENT, DO YOU KNOW WHY HE IS
SENDING THIS TO YOU?

A. IT LOOKS LIKE HE WAS SENDING IT TO ME ON HOW WE CODED HER.

MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS DOCUMENT

INTO EVIDENCE, YOUR HONOR.

MS. SMALLETS: NO OBJECTION.

THE COURT: ADMITTED.

(DEFENDANT'S EXHIBIT 586 RECEIVED IN EVIDENCE)

BY MR. LAFAYETTE:

Q. TAKE A LOOK AT 587. DO YOU HAVE IT?

A. YES, SIR.

Q. IS THE TOP AN EMAIL DATED SEPTEMBER 20, 2016, FROM JEFF FISCHER?

A. YES.

Q. AND IS HE TRANSMITTING AN EMAIL TO YOU FROM MARCH 23, 2016?

MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS DOCUMENT
DENCE, YOUR HONOR.

MS. SMALLETS: NO OBJECTION.

THE COURT: ADMITTED.

(DEFENDANT'S EXHIBIT 587 RECEIVED IN EVIDENCE)

BY MR. LAFAYETTE:

Q. CAN YOU TAKE A LOOK AT EXHIBIT 588.

IS THAT AN EMAIL DATED SEPTEMBER 20, 2016?

A. YES.

Q. AND DID -- IS HE TRANSMITTING HERE, MR. FISCHER, AN EMAIL FROM MARCH 23?

A. YES.

MR. LAFAYETTE: I WOULD LIKE TO MOVE THIS INTO
YOUR HONOR.

MS. SMALLETS: NO OBJECTION.

THE COURT: ADMITTED.

1 (DEFENDANT'S EXHIBIT 588 RECEIVED IN EVIDENCE)

2 **BY MR. LAFAYETTE:**

3 **Q.** LET ME TAKE A LOOK AT EXHIBIT 589.

4 **A.** I GOT IT.

5 **Q.** AND TELL ME WHAT THIS IS.

6 **A.** THIS IS A NOTE FROM JEFF FISCHER ALSO ON SEPTEMBER 20TH TO
7 MYSELF WITH THE SUBJECT OF CIARA.

8 **Q.** IS HE TRANSMITTING A PARTICULAR EMAIL TO YOU?

9 **A.** YES. THERE IS AN EMAIL ON MARCH 2ND.

10 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
11 INTO EVIDENCE, YOUR HONOR.

12 **THE CLERK:** IS IT 589?

13 **THE COURT:** CORRECT.

14 **MR. LAFAYETTE:** YES.

15 **THE COURT:** THAT IS WHAT THEY'RE TALKING ABOUT. ANY
16 OBJECTION?

17 **THE CLERK:** ALL RIGHT.

18 **THE COURT:** ANY OBJECTION?

19 **MS. SMALLETS:** NO OBJECTION.

20 **THE COURT:** ADMITTED.

21 (DEFENDANT'S EXHIBIT 589 RECEIVED IN EVIDENCE)

22 **BY MR. LAFAYETTE:**

23 **Q.** TAKE A LOOK AT 590. AND IS THIS AN EMAIL AT THE TOP DATED
24 SEPTEMBER 20, 2016? IS IT TRANSMITTING AN EMAIL FROM MARCH 2
25 OF 2016.

1 || A. YES.

2 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
3 INTO EVIDENCE, YOUR HONOR.

5 MS. SMALLETS: NO OBJECTION.

6 THE COURT: ADMITTED.

7 (DEFENDANT'S EXHIBIT 590 RECEIVED IN EVIDENCE))

8 | BY MR. LAFAYETTE:

9 Q. TAKE A LOOK AT EXHIBIT 591. IS THIS AN ANOTHER EMAIL FROM
10 MR. FISCHER TO YOU DATED SEPTEMBER 20, 2016?

11 | A. YES.

12 Q. AND IS THIS -- IS HE TRANSMITTING AN EMAIL THAT IS DATED
13 MARCH 2?

14 | A. YES.

15 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
16 INTO EVIDENCE, YOUR HONOR.

17 MS. NUGENT: NO OBJECTION.

18 THE COURT: ADMITTED.

19 (DEFENDANT'S EXHIBIT 591 RECEIVED IN EVIDENCE)

20 BY MR. LAFAYETTE:

21 || Q: NOW, 596, DO YOU SEE IT?

22 | A. YES.

23 Q. TELL ME WHAT THAT IS.

A. THIS IS A NOTE FROM ME TO CHRISTINE LAYNE.

Q. OKAY. AND ARE YOU RESPONDING TO AN EMAIL THAT SHE SENT TO

1 YOU?

2 **A.** YES.

3 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE THIS DOCUMENT
4 INTO EVIDENCE, YOUR HONOR.

5 **MS. SMALLETS:** OBJECTION, YOUR HONOR. THIS IS THE
6 SAME ISSUE WE DISCUSSED WITH RESPECT TO MR. LAFAYETTE OPENING
7 STATEMENT WHERE THIS WAS PREPARED IN ANTICIPATION OF POTENTIAL
8 LITIGATION. THE TIMELINE ON THAT IS ATTACHED.

9 **MR. LAFAYETTE:** I AM NOT ASSERTING ATTORNEY-CLIENT
10 PRIVILEGE.

11 **MS. SMALLETS:** IT IS NOT A BUSINESS RECORD AT THAT
12 POINT IN TIME.

13 **MR. LAFAYETTE:** GOES TO STATE OF MIND. I DON'T KNOW
14 WHAT THE OBJECTION IS.

15 **THE COURT:** DO YOU NEED TO ASK A SPECIFIC QUESTION ON
16 THIS?

17 DO YOU NEED TO ASK A SPECIFIC QUESTION ON THIS?

18 **MR. LAFAYETTE:** I WILL ASK HIM FOUNDATION QUESTIONS
19 REAL QUICK, YOUR HONOR.

20 **THE COURT:** OKAY.

21 **BY MR. LAFAYETTE:**

22 **Q.** DO YOU KNOW WHAT THIS DOCUMENT IS THAT MS. CHRISTINE LAYNE
23 SENT TO YOU ON SEPTEMBER 20, 2016?

24 **A.** IT LOOKS LIKE A TIMELINE.

25 **Q.** AND DO YOU KNOW WHAT THE TIMELINE IS ALL ABOUT?

1 **A.** THE EVENTS WHEN CIARA WAS EMPLOYED THERE OF DIFFERENT
2 PERFORMANCE ISSUES AND DIFFERENT....

3 **Q.** ALL RIGHT.

4 **A.** YEAH. PERFORMANCE ISSUES AND TARDIES ARE ALSO IN HERE.

5 **Q.** LOOK AT THE TOP EMAIL. IS THAT AN EMAIL FROM YOU? ON
6 THAT PAGE, THE TOP EMAIL ON PAGE 1946?

7 **A.** THE TOP IS FROM ME TO CHRISTINE.

8 **Q.** AND TELL ME WHAT YOU HAD BEEN DOING WITH THIS DOCUMENT
9 WHEN YOU RESPONDED BACK TO CHRISTINE?

10 **A.** I ADDED THAT -- I ADDED THAT BUMP IN THE PUMP. I ADDED TO
11 THIS DOCUMENT -- I ADDED TO CHRISTINE ABOUT BUMPING THE PUMP.

12 **Q.** IS THIS A CHRONOLOGY OF ALL THE THINGS THAT HAPPENED WITH
13 MS. NEWTON?

14 **A.** YES.

15 **Q.** HAD YOU BEEN WORKING WITH MS. CHRISTINE LAYNE ABOUT
16 CREATING SOMETHING LIKE THIS?

17 **A.** I SENT CHRISTINE ALL THOSE EMAILS THAT I WAS GETTING FROM
18 OTHERS AND SHE -- APPEARS THAT CREATED THIS TIMELINE.

19 **Q.** OKAY. DID SHE SEND IT TO YOU TO MAKE EDITS TO IT, IF YOU
20 HAD?

21 **A.** YES.

22 **MR. LAFAYETTE:** I WOULD LIKE TO MOVE IT INTO
23 EVIDENCE, YOUR HONOR.

24 **THE COURT:** ALL RIGHT. WE WILL DISCUSS THE OBJECTION
25 AFTERWARDS, BUT KEEP GOING.

BY MR. LAFAYETTE:

Q. NOW, AT SHOULD POINT IN TIME, DID YOU RECEIVE FROM MR. METCALF SOMETHING REGARDING HIS ASSESSMENTS OF MS. NEWTON?

A. YES.

Q. AND DID YOU SEND HIM AN EMAIL BACK REGARDING HIS ASSESSMENTS OF MS. NEWTON?

A. YES.

Q. I WOULD LIKE TO SHOW THE WITNESS WHAT'S BEEN PUT INTO EVIDENCE AS EXHIBIT --

THE COURT: STAY BY THAT MIC.

MR. LAFAYETTE: THANK YOU, YOUR HONOR. 593.

(DISPLAYED ON SCREEN.)

BY MR. LAFAYETTE:

Q. DO YOU SEE EXHIBIT 593?

A. YES.

THE COURT: DO YOU HAVE THAT, MS. SMALLETS?

MS. SMALLETS: I DO NOT HAVE 593.

THE COURT: IT IS NOT IN THE BINDER. CAN YOU PULL IT UP?

LET ME KNOW WHEN YOU HAVE IT.

MS. SMALLETS: I HAVE IT NOW, YOUR HONOR.

THE COURT: ALL RIGHT. PROCEED.

(DISPLAYED ON SCREEN.)

BY MR. LAFAYETTE:

Q. THIS IS AN EMAIL THAT YOU SENT TO MR. METCALF?

1 **A.** YES.

2 **THE COURT:** I'M NOT SHOWING 593 IN EVIDENCE. OH, IT
3 WAS THIS MORNING.

4 **MR. LAFAYETTE:** IT WAS THIS MORNING.

5 **BY MR. LAFAYETTE:**

6 **Q.** IT SAYS HERE:

7 RICHARD, BEFORE YOU ISSUE, LET'S ALIGN ON CIARA'S 240
8 REVIEW.

9 DO YOU SEE THAT?

10 **A.** YES.

11 **Q.** WHAT DO YOU MEAN BY THAT?

12 **A.** I WANTED TO BE SURE RICHARD ALIGNED WITH HIMSELF BECAUSE
13 HE HAD GAVE ME ANOTHER RATING OR RANKING THAT I ASKED THE TEAM
14 LEADERS TO DO OR THE PRODUCTION SUPERVISORS ASKED ALL THE TEAM
15 LEADERS TO DO IN REGARD TO THE NEW HIRE.

16 HE HAD HER AT A TWO THAT SHE WOULD -- HE WOULD KEEP HER
17 WITH ONE BEING THE LOWEST, AND I WANTED TO JUST BE SURE THAT
18 HER PROGRESS REPORT WAS CONSISTENT ON THE RANK AND RATINGS
19 THAT HE GAVE ME.

20 **Q.** I JUST BLEW SOMETHING ELSE UP, CULL IT OUT AS THEY SAY,
21 WHERE IT SAYS, PERMITTING, TWO. DO YOU SEE THAT?

22 **A.** YES.

23 **Q.** AND IT ALSO SAYS, ISOLATING, TWO. DO YOU SEE THAT?

24 **A.** YES.

25 **Q.** AND WHETHER OR NOT YOU WOULD HIRE THEM TODAY, TWO.

1 DO YOU SEE THAT?

2 **A.** YES.

3 **Q.** SO WERE YOU ASKING HIM TO COMPARE THOSE RATINGS WITH HIS
4 240 ASSESSMENT?

5 **MS. SMALLETS:** OBJECTION, LEADING.

6 **THE COURT:** I'M GOING TO ALLOW IT. GO AHEAD.

7 **THE WITNESS:** YES.

8 **BY MR. LAFAYETTE:**

9 **Q.** DID YOU PROPOSE A TIME TO DO THAT?

10 TAKE A LOOK AT YOUR EMAIL. WHEN YOU WRITE: I SET A
11 MEETING NOTICE FOR ME AND YOU AND MIKE TO DISCUSS AFTER THE
12 MONDAY MORNING MEETING.

13 DO YOU SEE THAT?

14 **A.** WHERE IS THAT DOCUMENT AT?

15 **Q.** TOP OF THE PAGE, THE ONE YOU HAVE RIGHT THERE ON THE
16 SCREEN.

17 **THE COURT:** HE CAN BARELY SEE IT WITH THE WAY YOU
18 HAVE HIGHLIGHTED IT.

19 **BY MR. LAFAYETTE:**

20 **Q.** RIGHT HERE (INDICATING).

21 **A.** I SEE IT.

22 **Q.** ALL RIGHT. THAT MEETING, DID YOU ORDER -- DID YOU HAVE
23 THAT MEETING WITH MR. METCALF?

24 **A.** I BELIEVE SO.

25 **Q.** DID YOU ORDER HIM TO CHANGE HIS ASSESSMENT?

A. NO.

Q. DID MR. BECK ORDER HIM TO CHANGE HIS ASSESSMENT?

A. NO.

Q. IN THAT MEETING WAS THERE A -- DID YOU GUYS DISCUSS SOME PERFORMANCE PROBLEMS WITH MS. NEWTON?

A. I BELIEVE SO.

Q. ALL RIGHT. I WANT YOU TO TAKE A LOOK AT EXHIBIT 600.

DO YOU RECOGNIZE EXHIBIT 600?

A. YES.

MR. LAFAYETTE: I THINK IT'S IN EVIDENCE, YOUR HONOR,
S MORNING.

(DISPLAYED ON SCREEN.)

THE COURT: YES.

BY MR. LAFAYETTE:

Q. IS THIS AN EMAIL THAT YOU RECEIVED ON FRIDAY,
SEPTEMBER 23RD FROM RICHARD METCALF?

A. YES.

Q. DID YOU DEMAND THAT MR. METCALF SEND YOU THIS DOCUMENT?

A. **NO.**

Q. ALL RIGHT.

SO TAKE -- CAN YOU TURN TO THE SECOND PAGE OF THIS
BIT? DO YOU HAVE THE SECOND PAGE THERE?

A. YES.

Q. THERE ARE TWO EVENTS REFERENCED THERE; DO YOU SEE THAT?

A. YES, SIR.

1 **Q.** WHEN YOU MET WITH MR. BECK ON THE FOLLOWING MONDAY, DID
2 YOU GUYS DISCUSS THESE INCIDENCES?

3 **A.** I BELIEVE SO.

4 **Q.** WERE THESE INCIDENCES OF CONCERN TO YOU?

5 **A.** THESE WERE BIG RED FLAGS FOR ME.

6 **Q.** WHY?

7 **A.** BECAUSE THE FIRST ONE SHE WAS GOING TO ISSUE A PERMIT THAT
8 SHE WAS NOT QUALIFIED FOR. IT WAS A HOT WORK PERMIT. HER
9 COWORKER, ONE OF HER COWORKERS HAD STOPPED AND INTERVENED
10 BEFORE THE PERMIT COULD BE ISSUED.

11 THERE WAS ALSO A CONCERN OR AN ISSUE WITH HER NOT PUTTING
12 ON -- BEING ABLE TO PUT ON FRESH AIR. IN A REFINERY, FRESH
13 AIR IS A SELF-CONTAINED BREATHING APPARATUS THAT THE OPERATORS
14 PUT ON. SO IF THERE IS ANY TOXIC GAS WHILE CHECKING WHAT'S IN
15 THE PIPE, THEY WON'T BE EXPOSED. SHE COULDN'T PERFORM THAT
16 TASK.

17 THE OTHER ONE WAS AROUND A TASK THE OPERATORS DO, THEY
18 CONTROL THE CONDUCTIVITY AROUND BOILER BLOWDOWN. IT'S
19 SOMETHING THAT OPERATORS HAD BEEN TRAINED ON, SOMETHING A
20 QUALIFIED OPERATOR SHOULD KNOW, AND IT WAS A TASK THAT SHE WAS
21 UNFAMILIAR WITH.

22 **Q.** DID YOU MEET WITH MS. LAYNE AT ANY POINT IN TIME FOR
23 PURPOSES OF FORMULATING A RECOMMENDATION FOR THE PROBATIONARY
24 EMPLOYEES THAT WERE IN OPCEN?

25 **MS. SMALLETS:** OBJECTION, LEADING.

1 **THE COURT:** SUSTAINED.

2 **BY MR. LAFAYETTE:**

3 **Q.** DID YOU HAVE A DISCUSSION ABOUT THE OTHER PROBATIONARY
4 EMPLOYEES IN OPCEN?

5 **A.** WITH REGARD TO THE PROBATIONARY PERIOD COMING TO AN END
6 AND HOW THEY ARE WERE DOING, ME AND CHRISTINE WERE TALKING.

7 **Q.** OKAY. AND WITH REGARD TO THE DISCUSSION THAT YOU HAD, WAS
8 IT DIFFERENT THAN THE DISCUSSION THAT YOU HAD CONCERNING
9 MS. NEWTON?

10 **A.** YES, IT WAS VERY DIFFERENT.

11 **Q.** HOW SO?

12 **A.** WITH CIARA I HAD CONCERNS ABOUT PERFORMANCE. SOME --
13 SOME -- SOME BIG RED FLAGS AROUND PERFORMANCE AND THE SAFETY
14 OF OUR WORKERS, THE SAFETY OF CIARA, THE SAFETY OF THE
15 COMMUNITY AROUND THE REFINERY. THE PERFORMANCE ISSUES I WAS
16 SEEING CAUSED ME VERY, VERY MUCH CONCERN. I DIDN'T SEE THIS
17 WITH THE OTHER NEW HIRES.

18 **Q.** NOW IN OPCEN, YOU HAD CIARA NEWTON, RIGHT?

19 **A.** YES.

20 **Q.** DO YOU RECALL WHO ELSE YOU HAD IN OPCEN?

21 **A.** THE ONES THAT WENT TO OPCEN NORTH, IT WAS JOSE NAVARRO,
22 MENA -- I DON'T KNOW MENA'S LAST NAME, AND PATRIK NEUMAN. WE
23 HAD TWO WHO WENT TO THE SOUTH SIDE.

24 **Q.** WHO ARE THE TWO ON THE SOUTH SIDE?

25 **A.** BILL WESSELMAN... AND I FORGET THE OTHER ONE.

1 **Q.** OKAY. DID YOU HAVE SIMILAR PERFORMANCE ISSUES WITH THESE
2 OTHER PEOPLE?

3 **A.** NO.

4 **Q.** NOW, WITHIN YOUR PURVIEW, HOW MANY PEOPLE ARE UNDER YOUR
5 SUPERVISION?

6 **A.** I HAD EIGHT SHIFT TEAM LEADERS THAT REPORTED DIRECTLY TO
7 ME AND THEN TEMPORARY SHIFT TEAM LEADERS THAT ALSO DID.

8 **Q.** OKAY. DID YOU HAVE ANY AUTHORITY OVER ANYTHING BEYOND
9 YOUR STL'S?

10 DID YOU HAVE ANY AUTHORITY IN THE REFINERY BEYOND YOUR
11 STL'S IN YOUR UNITS?

12 **A.** NO.

13 **MS. SMALLETS:** OBJECTION, LEADING.

14 **THE COURT:** I'M GOING TO ALLOW THAT ONE, BUT I'LL
15 SUSTAIN FUTURE ONES.

16 **BY MR. LAFAYETTE:**

17 **Q.** DID YOU EVER HAVE A CONVERSATION WITH MR. CURRAN
18 CONCERNING WHETHER OR NOT HE WAS GETTING PHYSICALLY UPSET?

19 **MS. SMALLETS:** OBJECTION, LEADING.

20 **THE COURT:** SUSTAINED.

21 **BY MR. LAFAYETTE:**

22 **Q.** DID YOU HAVE A CONVERSATION WITH MR. CURRAN ABOUT HIS
23 SLEEP OR LACK THEREOF?

24 **THE COURT:** SUSTAINED.

BY MR. LAFAYETTE:

Q. DID YOU HAVE A CONVERSATION WITH MR. CURRAN ABOUT HOW HE FELT?

MS. SMALLETS: OBJECTION, VAGUE AND AMBIGUOUS.

THE COURT: OVERRULED. YOU CAN ANSWER THAT ONE.

THE WITNESS: I DO RECALL A CONVERSATION WITH CAMERON
ABOUT BEING CONCERNED ABOUT THE SAFETY OF CIARA AND HER
PERFORMANCE.

BY MR. LAFAYETTE:

Q. WHAT DID HE SAY?

A. THAT HE WAS LOSING SLEEP OVER IT.

MR. LAFAYETTE: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANY EXAMINATION?

MS. SMALLETS: YES, YOUR HONOR.

CROSS-EXAMINATION

BY MS. SMALLETS:

Q. GOOD AFTERNOON, MR. PEREZ.

A. HELLO.

Q. YOU NEVER LOOKED INTO THE CLAIMS THAT RICHARD METCALF TOLD YOU THAT MIKE CUTSHAW HAD MADE ABOUT MS. NEWTON, CORRECT?

A. I DON'T EVER RECALL HIM TELLING ME THAT.

Q. NO. YOU NEVER LOOKED INTO THEM, DID YOU?

A. I DIDN'T KNOW ABOUT IT.

Q. YOU DIDN'T KNOW THAT -- THAT MR. METCALF WAS TELLING YOU THAT MIKE CUTSHAW HAD RAISED CONCERNS ABOUT MS. NEWTON?

1 **MR. LAFAYETTE:** OBJECTION. THE QUESTION IS VAGUE AND
2 AMBIGUOUS.

3 | **THE COURT:** OVERRULED.

4 **THE WITNESS:** I'M SORRY. GO AHEAD. I GOT CONFUSED
5 WITH SOMETHING ELSE. CAN YOU PLEASE ASK IT AGAIN?

6 BY MS. SMALLETS:

7 Q. SURE. YOU NEVER LOOKED INTO THE CONCERNS THAT RICHARD
8 METCALF TOLD YOU THAT MIKE CUTSHAW RAISED ABOUT MS. NEWTON,
9 CORRECT?

10 **A.** CORRECT.

11 Q. AND, IN FACT, THAT WAS BECAUSE MIKE CUTSHAW WASN'T WILLING
12 TO PUT HIS NAME BEHIND THOSE CONCERNS, CORRECT?

13 A. I DON'T KNOW THAT TO BE TRUE.

14 **MS. SMALLETS:** YOUR HONOR, WE WOULD LIKE TO INTRODUCE
15 EXHIBIT 68 INTO EVIDENCE.

16 YOU AND MR. LAFAYETTE WERE GIVEN A COPY THIS MORNING WHEN
17 MR. METCALF WAS ON THE STAND, AND IT WASN'T ADMITTED AT THAT
18 TIME.

19 MR. LAFAYETTE: LET ME SEE IF I CAN FIND IT.

(PAUSE IN THE PROCEEDINGS.)

22 MR. LAFAYETTE: YES, I DO.

24 MS. SMALLETS: MAY I APPROACH THE WITNESS?

1 (EXHIBIT HANDED TO WITNESS.)

2 **BY MS. SMALLETS:**

3 Q. MR. PEREZ, PLEASE TAKE A LOOK AT THIS DOCUMENT. IT HAS
4 BEEN MARKED AS EXHIBIT 68. IS THIS AN EMAIL THAT YOU SENT TO
5 CHRISTINE LAYNE?

6 A. YES.

7 **MS. SMALLETS:** YOUR HONOR, WE WOULD LIKE TO MOVE
8 EXHIBIT 68 INTO EVIDENCE.

9 **THE COURT:** ANY OBJECTION?

10 **MR. LAFAYETTE:** NO.

11 **THE COURT:** ADMITTED.

12 (PLAINTIFF'S EXHIBIT 68 RECEIVED IN EVIDENCE)

13 (DISPLAYED ON SCREEN.)

14 **BY MS. SMALLETS:**

15 Q. IN THIS EMAIL, MR. PEREZ, YOU TOLD CHRISTINE LAYNE THAT
16 YOU NEVER DID AN INVESTIGATION INTO THE CLAIMS THAT MIKE
17 CUTSHAW HAD RAISED, CORRECT?

18 A. YEAH. I WAS SAYING -- MY NOTE TO CHRISTINE JUST SAYS THAT
19 MIKE, THE OPERATOR THAT BROUGHT IT TO RICHARD, IS CONCERNED
20 ABOUT HIS NAME ON THIS DOCUMENT.

21 Q. SO IT'S CORRECT THAT MIKE, THE OPERATOR, DID NOT WANT TO
22 HAVE HIS NAME ON THE DOCUMENT, CORRECT?

23 A. YES.

24 Q. MR. PEREZ, MR. LAFAYETTE WAS ASKING YOU EARLIER ABOUT A
25 TIMELINE. DO YOU RECALL THOSE QUESTIONS?

1 **A.** YES.

2 **Q.** YOU DIDN'T CREATE THAT DOCUMENT, DID YOU?

3 **A.** I DIDN'T PUT IT TOGETHER, NO.

4 **Q.** AND YOU DON'T RECALL WHETHER YOU SAW THAT DOCUMENT PRIOR
5 TO MS. NEWTON'S TERMINATION, DO YOU?

6 **A.** I WOULD HAVE TO LOOK AT THE DATE OF THE EMAIL, BUT I
7 BELIEVE I DID.

8 **Q.** WHEN YOU FIRST SAW THAT DOCUMENT, YOU DID NOT REVIEW THE
9 ENTRY -- EACH AND EVERY ENTRY IN THAT DOCUMENT FOR ACCURACY,
10 DID YOU?

11 **A.** I CAN'T SAY -- I WOULD HAVE TO RE-LOOK AT IT AND SEE WHAT
12 EACH ONE OF THOSE DOCUMENTS AND SEE IF I WAS INVOLVED WITH
13 EVERYONE THERE TO ANSWER IT.

14 **Q.** BUT YOU DIDN'T REVIEW THE DOCUMENT FOR ACCURACY, DID YOU?

15 **A.** I BELIEVE WHEN CIARA SENT IT TO ME, YEAH, I DID REVIEW IT.

16 **Q.** WHEN CIARA SENT IT TO YOU?

17 **A.** I'M SORRY. WHEN CHRISTINE SENT IT TO ME.

18 **Q.** YOU REVIEWED IT?

19 **A.** YES, BECAUSE I -- BECAUSE IT WAS MISSING BUMPING THE PUMP
20 AND THEN I GAVE HER THAT BACK, SAID IT WAS MISSING ABOUT
21 BUMPING THE PUMP.

22 **Q.** BUT YOU DIDN'T REVIEW EACH OF THE ENTRIES, DID YOU?

23 **A.** I WOULD HAVE TO LOOK AT THAT TO TELL YOU THAT.

24 **Q.** YOU CAN LOOK AT IT.

25 **A.** WHICH ONE WAS IT?

1 (PAUSE IN THE PROCEEDINGS.)

2 Q. I'LL MOVE ON.

3 WHEN YOU LOOKED INTO MS. NEWTON'S GATE LOGS, YOU LOOKED
4 INTO THE GATE LOGS OF THE OTHER THREE OPERATORS, CORRECT?

5 A. YES.

6 **MS. SMALLETS:** MAY I APPROACH THE WITNESS WITH A
7 DOCUMENT?

8 **THE COURT:** WHICH DOCUMENT?

9 **MS. SMALLETS:** EXHIBIT 89.

10 **THE COURT:** IS IT IN EVIDENCE?

11 **MS. SMALLETS:** WE ARE GOING TO MOVE IT INTO EVIDENCE.

12 (EXHIBIT HANDED TO WITNESS.)

13 **THE COURT:** PROCEED.

14 **BY MS. SMALLETS:**

15 Q. MR. PEREZ, IS THIS A DOCUMENT THAT YOU CREATED?

16 A. YES.

17 Q. AND THIS DOCUMENT SHOWS THE START AND STOP TIMES OF
18 MS. NEWTON AND THE OTHER THREE OPERATES IN MR. FISCHER'S
19 TRAINING CLASS, CORRECT?

20 A. YES.

21 **MS. SMALLETS:** YOUR HONOR, WE WOULD LIKE TO MOVE THIS
22 INTO EVIDENCE.

23 **THE COURT:** ANY OBJECTION?

24 **MR. LAFAYETTE:** YES. IT'S AN INCOMPLETE DOCUMENT.

25 **THE COURT:** YOU CAN SHOW IT TO THE JURY. WE WILL

1 DISCUSS WHETHER WE HAVE THE WHOLE THING OR NOT.

2 GO AHEAD.

3 **BY MS. SMALLETS:**

4 Q. MR. PEREZ, THIS DOCUMENT SHOWS... WHEN YOU SEE THOSE
5 NUMBERS AT THE TOP OF THE DOCUMENT, THOSE REFER TO THE THREE
6 OTHER TRAINEES IN MS. NEWTON'S NEW HIRE CLASS, CORRECT?

7 A. YES.

8 Q. AND THE BOXES IN YELLOW SHOW TIMES THAT THE OTHER NEW
9 HIRES ARRIVED AFTER 6:15, CORRECT?

10 A. YES.

11 Q. AS DO THE BOXES IN ORANGE, CORRECT?

12 A. YES.

13 Q. NOW, MS. NEWTON WAS WRITTEN UP FOR BEING TARDY ON APRIL 7,
14 CORRECT?

15 A. NOT WRITTEN UP.

16 Q. SHE WAS -- SHE WAS -- AN ENTRY IS MADE IN HER PD LOG FOR
17 BEING TARDY ON APRIL 7TH, CORRECT?

18 A. YES.

19 Q. AND HER PAY WAS DOCKED FOR BEING TARDY AN APRIL 7TH,
20 RIGHT?

21 A. I DON'T KNOW THAT.

22 Q. BUT SHE WASN'T TARDY ON APRIL 7TH, CORRECT? THAT WAS
23 WRONG.

24 A. I BELIEVE IT TO BE A TYPO.

25 Q. AFTER YOU FOUND THAT OUT, THAT YOU THOUGHT IT WAS A TYPO,

1 YOU DIDN'T CORRECT HER PD LOG, DID YOU?

2 **A.** I DIDN'T CHANGE 4/7 TO 4/8, NO, THAT IS CORRECT.

3 **Q.** YOU DIDN'T CORRECT YOUR PD LOG.

4 **A.** NO.

5 **Q.** DID YOU -- AND YOU DIDN'T MAKE SURE HER PAY WAS CORRECTED,
6 DID YOU?

7 **A.** I DON'T BELIEVE -- I DON'T KNOW IF SHE WAS DOCKED OR NOT.

8 **Q.** YOU JUST ASSUMED THAT SHE MUST HAVE BEEN TARDY ON
9 APRIL 8TH, CORRECT?

10 **A.** ON APRIL 8?

11 **Q.** YES.

12 **A.** YES.

13 **Q.** YOU DIDN'T ASK MS. NEWTON WHAT WAS GOING ON ON APRIL 8TH?

14 **A.** I DON'T BELIEVE I DID.

15 **Q.** AND THE EXHIBIT 89 THAT YOU PREPARED SHOWED THAT TWO OF
16 THE NEW HIRES IN MR. FISCHER'S TRAINING CLASS WEREN'T AT WORK
17 ON APRIL 8TH, CORRECT?

18 **A.** I HAVE A LEGEND OF EXPLAINING EACH DAY, AND I'M NOT SURE
19 IF THEY WERE -- I WOULD HAVE TO LOOK AT THAT DAY IN PARTICULAR
20 FOR APRIL 8TH.

21 **Q.** IT'S RIGHT IN FRONT OF YOU, MR. PEREZ.

22 **MR. LAFAYETTE:** OBJECTION, YOUR HONOR. MY OBJECTION
23 IS IT'S AN INCOMPLETE DOCUMENT.

24 **THE COURT:** SUSTAINED. WHERE'S THE LEGEND? I DON'T
25 SEE IT.

1 MS. SMALLETS: THE LEGEND IS NOT -- IT'S NOT PRODUCED
2 NEXT IN LINE? I DON'T THINK SO.

3 **MR. LAFAYETTE:** IT'S AN INCOMPLETE DOCUMENT. THAT'S
4 WHY I'M MAKING THE OBJECTION.

THE COURT: WHERE IS DEFENDANT'S 469?

IF YOU KNOW IT'S INCOMPLETE THEN YOU MUST HAVE AN EXHIBIT.

7 MR. LAFAYETTE: I'M GOING TO PULL IT, YOUR HONOR.

8 (PAUSE IN THE PROCEEDINGS.)

9 **MS. SMALLETS:** YOUR HONOR, I HAVE 469. IT IS NOT A
10 LEGEND TO THAT DOCUMENT.

11 THE COURT: IS THERE AN EXHIBIT NUMBER?

12 MS. SMALLETS: I'M SORRY?

13 **THE COURT:** IS THERE AN EXHIBIT NUMBER ASSOCIATED
14 WITH IT?

15 MS. SMALLETS: SO -- NO. NO.

16 **THE COURT:** IS THERE AN EXHIBIT NUMBER ASSOCIATED
17 WITH DEFENDANT'S 469?

18 MS. SMALLETS: NO, I DON'T BELIEVE SO.

I'M HAPPY TO SHOW IT TO YOU IF YOU'D LIKE.

20 **THE COURT:** I'M WAITING FOR MR. LAFAYETTE. DO YOU
21 HAVE AN EXHIBIT OR NOT?

22 MR. LAFAYETTE: I DO NOT HAVE THAT ONE.

23 I HAVE AN EXHIBIT THAT WE MARKED AS 563 THAT CONTAINS --
24 THAT I CAN FIND RIGHT OFF THE TOP. IT'S THE SAME DOCUMENT BUT
25 IT HAS A DIFFERENT BATES STAMP RANGE ON IT BECAUSE IT WAS

1 PRODUCED MULTIPLE TIMES.

2 I AM TRYING TO FIND THE ONE THAT HAS THE KEY.

3 **THE COURT:** I DON'T SEE A LEGEND ON THAT EITHER.

4 SHOW HIM 563, SEE IF THAT REFRESHES HIS MEMORY IN TERMS OF
5 HIS TESTIMONY.

6 (EXHIBIT HANDED TO WITNESS.)

7 **THE WITNESS:** THANK YOU.

8 **THE COURT:** IS THAT THE LEGEND YOU ARE TALKING ABOUT?

9 **THE WITNESS:** NO. THERE WAS A LEGEND EXPLAINING THE
10 GAPS IN THIS DOCUMENT.

11 **THE COURT:** DO YOU HAVE OTHER AREAS OF INQUIRY?

12 (PAUSE IN THE PROCEEDINGS.)

13 **MR. LAFAYETTE:** IT'S PLAINTIFF'S EXHIBIT 29, I THINK.
14 HERE IT IS. I FOUND IT. IT'S PLAINTIFF'S EXHIBIT 30 AND
15 THE KEY IS ON BATES STAMP PAGE 114.

16 **THE COURT:** PLAINTIFF'S 30 DOESN'T HAVE -- I DON'T
17 HAVE 114.

18 **MR. LAFAYETTE:** PLAINTIFF'S 30?

19 **THE COURT:** PLAINTIFF'S 30 DOESN'T HAVE --
20 PLAINTIFF'S 30 STOPS AT DEFENSE'S 113.

21 **MR. LAFAYETTE:** I AM SAYING IT IS A -- IT HAS BEEN
22 PRODUCED MULTIPLE --

23 **THE COURT:** DO YOU HAVE 114?

24 **MR. LAFAYETTE:** I HAVE 114 HERE.

25 **THE COURT:** GIVE IT TO MS. SMALLETS.

(COUNSEL CONFER.)

MR. LAFAYETTE: I CAN PUT IT ON THE SCREEN, YOUR HONOR, IF THAT HELPS.

THE COURT: PUT IT ON THE ELMO.

(DISPLAYED ON SCREEN.)

WHERE IS 114?

MR. LAFAYETTE: THAT IS 114 RIGHT THERE.

THE COURT: CAN YOU OPEN IT?

IS THAT WHAT YOU ARE TALKING ABOUT?

THE WITNESS: YES.

THE COURT: ALL RIGHT. LEAVE IT UP. ASK HIM YOUR
S.

MS . SMALLETS : SURE .

BY MS. SMALLETS:

Q. MR. PEREZ, TWO OF MS. NEWTON'S FELLOW TRAINEES WEREN'T AT WORK ON APRIL 8TH, WERE THEY?

A. THAT'S CORRECT.

Q. AND, IN FACT, ON THE DOCUMENT THAT I SHOWED YOU, YOU PUT QUESTION MARKS IN ONE OF THOSE COLUMNS, DIDN'T YOU?

A. YES.

Q. BUT YOU DON'T KNOW WHY THEY WEREN'T AT WORK THAT DAY, DO YOU?

A. ONE OF THEM, IF THE LEGEND -- I WOULD HAVE TO REFERENCE THIS LEGEND TO THE -- IT DOESN'T HAVE ON THIS SHEET, BUT ONE MAY HAVE BEEN ON VACATION. THE OTHER ONE WITH QUESTION MARKS

1 IS THE ONE I DIDN'T KNOW WHERE THEY WERE AT.

2 Q. HOW CAN -- SO HOW CAN YOU TELL, LOOKING AT THE DOCUMENT
3 THAT I GAVE YOU, EXHIBIT 89, WHAT DAYS WERE PEOPLE ON
4 VACATION?

5 A. YOU CAN'T. THIS DOESN'T HAVE THE COLUMNS ON THE EXCEL
6 SPREADSHEET. SO THIS LEGEND THAT I HAVE HAS THE COLUMNS AND
7 THE ROWS. THAT'S HOW I COULD TELL. THERE WERE A COUPLE OF
8 PEOPLE ON VACATION ON D22 AND F22 ON MY LEGEND.

9 Q. YOU DON'T KNOW WHAT DAYS THOSE WERE?

10 A. NOT -- BECAUSE THIS DOESN'T HAVE THE COLUMNS AND ROW
11 NUMBERS. SO ON THIS I CAN'T TELL.

12 Q. AS YOU SIT HERE TODAY, YOU DON'T KNOW IF IT WAS ON
13 APRIL 8TH, DO YOU?

14 A. I DON'T. NOT WITH THIS.

15 Q. NOW MS. NEWTON WASN'T TARDY IN MAY, WAS SHE?

16 A. THIS ONLY GOES TO MAY 1ST, EXHIBIT 89.

17 Q. TO THE BEST OF YOUR KNOWLEDGE, MS. NEWTON WAS NOT TARDY IN
18 MAY, WAS SHE?

19 A. I DON'T KNOW.

20 Q. YOU DON'T HAVE ANY REASON TO BELIEVE SHE WAS?

21 A. ONE WAY OR THE OTHER, I DON'T. IN MAY, I DON'T KNOW.

22 Q. AND MS. NEWTON WASN'T TARDY IN JUNE, WAS SHE?

23 A. I DON'T KNOW ONE WAY OR ANOTHER.

24 Q. MS. NEWTON WASN'T TARDY IN JULY, WAS SHE?

25 A. SHE WAS, JULY 22ND.

1 **Q.** SO YOU ARE COUNTING THAT AS A TARDY NOW?

2 **A.** SHE WAS TARDY ON JULY 22ND.

3 **Q.** WE WILL TALK ABOUT THAT IN A SECOND.

4 MS. NEWTON WASN'T TARDY IN AUGUST, WAS SHE?

5 **A.** I DON'T KNOW ONE WAY OR ANOTHER.

6 **Q.** YOU DON'T HAVE ANY INFORMATION THAT SAYS SHE WAS?

7 **A.** I DON'T KNOW HOW FAR THOSE GATE LOGS WENT TO, BUT I DON'T
8 KNOW ONE WAY OR ANOTHER RIGHT NOW.

9 **Q.** AND SHE WASN'T TARDY IN SEPTEMBER, WAS SHE?

10 **A.** I DON'T KNOW ONE WAY OR ANOTHER.

11 **Q.** NOW MR. CURRAN SAID THAT MS. NEWTON WAS LATE ON JULY 22ND,
12 RIGHT?

13 **A.** YES.

14 **Q.** AND SHE HAD CALLED PATRIK NEUMAN -- YOU KNEW THAT SHE
15 CALLED PATRIK NEUMAN TO STAY FOR A FEW MINUTES AND COVER FOR
16 HER, DIDN'T YOU?

17 **A.** I BELIEVE I DID. I KNEW SHE DIDN'T CALL THE TEAM LEADER.

18 **Q.** AND -- BUT YOU'RE AWARE OF INSTANCES IN WHICH OPERATORS
19 HAVE ANOTHER OPERATOR STAY FOR THEM WITHOUT NOTIFYING THE STL,
20 RIGHT?

21 **A.** I HEARD THAT IT HAPPENS, BUT IF I KNOW ABOUT IT, I WOULD
22 HAVE TO ADDRESS IT AS I EXPECT THE TEAM LEADERS TO DO ALSO.

23 **Q.** YOU KNOW THAT HAPPENS, RIGHT?

24 **A.** I HAVE HEARD OF IT HAPPENING BEFORE, YES.

25 **Q.** THAT'S WHY YOU TOLD MR. CURRAN THAT HE COULDN'T DISCIPLINE

1 HER FOR BEING LATE ON JULY 22ND, RIGHT?

2 **A.** I DON'T KNOW A HUNDRED PERCENT WHY I TOLD HIM NOT TO DO
3 ANYTHING, BUT IF YOU SAY I DID THEN I DID.

4 **MS. SMALLETS:** YOUR HONOR, MAY I APPROACH?

5 MAY I?

6 **THE COURT:** YOU MAY.

7 (EXHIBIT HANDED TO WITNESS.)

8 **BY MS. SMALLETS:**

9 **Q.** MR. PEREZ, IS THIS AN EMAIL -- MR. PEREZ....

10 (PAUSE IN THE PROCEEDINGS.)

11 (DISPLAYED ON SCREEN.)

12 MR. PEREZ, IS EXHIBIT 26 AN EMAIL EXCHANGE THAT YOU HAD
13 WITH CAMERON CURRAN ON JULY 25TH?

14 **A.** YES.

15 **Q.** AND IN THAT EMAIL EXCHANGE, YOU ARE DISCUSSING THE
16 JULY 22ND TARDY, CORRECT?

17 **A.** I DON'T KNOW FOR SURE A HUNDRED PERCENT IF IT WAS FOR
18 JULY 22ND.

19 **MS. SMALLETS:** YOUR HONOR, I WOULD ACTUALLY LIKE TO
20 REQUEST THAT EXHIBIT 26 BE INTO EVIDENCE. I'M SORRY, I'M NOT
21 SURE THAT IT IS.

22 **THE COURT:** I'LL ADMIT IT. GO AHEAD.

23 (PLAINTIFF'S EXHIBIT 26 RECEIVED IN EVIDENCE)

24 **BY MS. SMALLETS:**

25 **Q.** YOU TELL MR. CURRAN THAT YOU ARE NOT INCLINED TO COUNT THE

1 TARDY UNLESS WE CAN SAY WE WOULD HANDLE IT THE SAME WAY WITH
2 EVERYONE ELSE.

3 DO YOU SEE THAT?

4 **A.** YES.

5 **Q.** AND THEN YOU SAY THAT... THAT YOU COMPARE THE WAY THAT YOU
6 AND MR. CURRAN ARE HANDLING MS. NEWTON'S JOB PERFORMANCE WITH
7 THE WAY YOU'RE HANDLING JOHN HESS'S JOB PERFORMANCE, CORRECT,
8 IN THAT EMAIL?

9 **A.** JUST GIVE ME ONE SECOND TO READ IT, PLEASE.

10 (PAUSE IN THE PROCEEDINGS.)

11 YES.

12 **MS. SMALLETS:** I DON'T HAVE ANYTHING FURTHER.

13 **THE COURT:** ANY REDIRECT?

14 **MR. LAFAYETTE:** YES, YOUR HONOR.

15 **REDIRECT EXAMINATION**

16 **BY MR. LAFAYETTE:**

17 **Q.** WAS MR. MIKE CUTSHAW IN THE UNION?

18 **A.** I BELIEVE SO.

19 **Q.** DID MR. MIKE CUTSHAW EVER TELL YOU WHY IT WAS THAT HE
20 DIDN'T WANT HIS NAME ASSOCIATED ON THE DOCUMENT?

21 **A.** I DON'T BELIEVE SO.

22 **Q.** I TALKED TO YOU ABOUT THE TARDY ON JULY 22.

23 WAS SHE LATE?

24 **A.** SHE WAS LATE.

25 **Q.** HAD SHE -- TO YOUR KNOWLEDGE, HAD SHE CALLED THE STL?

1 **A.** SHE DIDN'T.

2 **Q.** DO YOU KNOW IF SHE HAD EVEN CALLED THE PERSON WHO WAS ON
3 BEFORE 6:00 A.M.?

4 **A.** I DON'T -- I DON'T KNOW THAT.

5 **Q.** NOW WHY IS IT THAT YOU DIDN'T PUT A TARDY ON HER PD LOG
6 FOR JULY 22ND?

7 **A.** I JUST WANTED TO BE SURE WE'RE CONSISTENT WITH EVERYBODY.

8 **Q.** SO JUST CONSISTENT WITH MR. CURRAN OR ACROSS THE BOARD
9 WITH ALL YOUR STL'S?

10 **A.** WITH EVERYONE.

11 **Q.** IF SHE HAD GOTTEN ONE MORE TARDY ABOVE THE TWO THAT SHE
12 ALREADY HAD, WHAT WOULD HAVE HAPPENED?

13 **A.** THAT WOULD HAVE BEEN AN INCIDENT TOWARDS OUR ATTENDANCE
14 POLICY.

15 **Q.** WHAT WOULD HAVE HAPPENED THERE FOR SOMEONE ON PROBATION?

16 **A.** IF ANY KIND OF PROBATIONARY PERSON WOULD HAVE RECEIVED A
17 FORMAL LEVEL OF DISCIPLINE, THEY WOULD PROBABLY BE TERMINATED.

18 **Q.** SO ON HER PD LOG THERE ARE ONLY TWO TARDIES, RIGHT?

19 **A.** YES.

20 **Q.** IF ANY OF THE OTHERS HAD EVER BEEN PUT ON HER PD LOG, WHAT
21 WOULD HAVE HAPPENED?

22 **A.** SHE WOULD HAVE HAD AN INCIDENT TOWARD OUR ATTENDANCE
23 POLICY.

24 **Q.** AND IF SHE HAD HAD SIX ON HER PD LOG, WHAT WOULD HAVE
25 HAPPENED?

1 **A.** SHE WOULD HAVE TWO INCIDENTS TOWARD OUR ATTENDANCE POLICY.

2 **Q.** WHAT WOULD HAVE BEEN THE CONSEQUENCES FOR SOMEONE ON
3 PROBATION?

4 **A.** AT THAT POINT SHE WOULD HAVE RECEIVED AN ATTENDANCE
5 AWARENESS DOCUMENT FOR TWO INCIDENTS, AND THE NEXT ONE WOULD
6 HAVE -- THE NEXT INCIDENT WOULD HAVE BEEN A FORMAL LEVEL OF
7 DISCIPLINE FOR ATTENDANCE.

8 **Q.** NOW, ON AUGUST 2, DID YOU MEET WITH HER TO GO OVER THE
9 TARDIES AND THE GATE LOG?

10 **MS. SMALLETS:** OBJECTION, BEYOND THE SCOPE.

11 **THE COURT:** OVERRULED.

12 **THE WITNESS:** YES.

13 **BY MR. LAFAYETTE:**

14 **Q.** DURING THAT MEETING, DID YOU SHARE WITH HER WHAT YOU
15 CONSIDERED TO BE HER DATES OF TARDY?

16 **A.** YES.

17 **Q.** WHAT DID SHE SAY IN RESPONSE?

18 **A.** I DON'T RECALL.

19 **Q.** DO YOU KNOW IF SHE PROTESTED ANY OF THE TARDIES DURING
20 THAT MEETING?

21 **A.** NO, SHE DIDN'T PROTEST NONE OF THEM. I DON'T RECALL SHE
22 EVER DOING THAT.

23 **Q.** DID SHE EVER POINT TO A TARDY THAT SHE SAID THAT'S NOT
24 TRUE OTHER THAN THE ONE ON THE 7TH?

25 **A.** NOT THAT I RECALL.

Q. DID YOU TALK ABOUT A POSSIBLE TYPO REGARDING THE 7TH WITH HER WHEN YOU MET WITH HER ON AUGUST 2ND?

A. YES. I WENT WORD-FOR-WORD OVER THAT DOCUMENT WITH HER. I FELT THE 7TH WAS A TYPO. IT WAS IN THE PD FILE DOCUMENTED AS APRIL 7TH BUT THE GATE LOG SHOWED APRIL 8TH.

MR. LAFAYETTE: ALL RIGHT.

THE COURT: IS THAT ALL?

MR. LAFAYETTE: I THINK THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: ANY FOLLOW-UP?

MS. SMALLETS: NO, YOUR HONOR.

THE COURT: MR. PEREZ, YOU ARE EXCUSED, SIR.

NEXT WITNESS.

MR. LAFAYETTE: MICHAEL BECK, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. LAFAYETTE: IT'S CAMERON CURRAN, YOUR HONOR.

(PAUSE IN THE PROCEEDINGS.)

THE COURT: DOES ANYBODY HAVE FUN PLANS FOR THE WEEKEND? YES? NO?

JUROR: I'M GOING TO TAKE CARE OF THEIR KIDS.

THE COURT: HOW IS THE SLEEP COMING ALONG?

JUROR: DOING OKAY. I GOT COFFEE THIS MORNING.

THE COURT: A LOT OF CAFFEINE. I THINK I'M GOT

NUTCRACKER WITH MY DAUGHTER. SHE'S COMING BACK FROM

1 ALL RIGHT. MR. CURRAN, I DID NOT EXCUSE YOU BECAUSE I
2 KNEW YOU WERE COMING BACK. SO YOU ARE STILL UNDER OATH.
3 DO YOU UNDERSTAND?

4 **THE WITNESS:** YES, MA'AM.

5 **THE COURT:** YOU MAY PROCEED.

6 **DIRECT EXAMINATION**

7 **BY MR. LAFAYETTE:**

8 **Q.** MR. CURRAN --

9 **THE COURT:** CURRAN, SORRY.

10 **BY MR. LAFAYETTE:**

11 **Q.** -- I WANT TO TALK TO YOU ABOUT JULY.

12 AT THE END OF JULY, DID YOU CONTINUE TO BE MS. NEWTON'S
13 SHIFT TEAM LEADER?

14 **A.** AT THE END OF JULY, I SWITCHED TO A DIFFERENT TEAM. I WAS
15 ONLY TEMPORARILY ON HER TEAM.

16 **Q.** YOU WERE WHAT?

17 **A.** I WAS ONLY TEMPORARILY FILLING A SPOT ON THAT CREW.

18 **Q.** OKAY. I WANT TO ASK YOU A LITTLE BIT ABOUT HOW YOU WORKED
19 WITH HER DURING THE TIME YOU HAD HER. OKAY?

20 WHAT DO YOU DO? DID YOU LEAVE HER ALONE? DID YOU WORK
21 WITH HER? TELL ME WHAT YOU DID.

22 **A.** I WORKED WITH HER TO HELP HER TO TRY TO LEARN HOW TO BE A
23 GOOD COMPETENT OPERATOR.

24 **Q.** HOW DID YOU DO THAT?

25 **A.** BY ASSISTING HER WITH TASKS, SHARING EXPERIENCES,

1 TRAINING, GOING OUT AND HELPING HER WHEN SHE NEEDED IT. AND
2 WHEN THERE WERE OTHER THINGS GOING ON IN DIFFERENT UNITS,
3 INVITING HER OUT TO COME AND PARTICIPATE TO HELP OUT AND LEARN
4 AND BE A PART OF THAT.

5 Q. DID YOU SPEND MORE OR LESS TIME WITH HER THAN YOUR OTHER
6 PROBATIONARY EMPLOYEES?

7 A. MORE.

8 Q. WHY?

9 A. TO HELP HER OUT. I DIDN'T WANT SO SEE HER FAIL.

10 Q. OKAY. WHEN YOU WERE -- AFTER YOU WROTE HER UP -- AFTER
11 YOU PUT ENTRIES IN THE PD LOG, DID YOU STOP TRYING TO HELP
12 HER?

13 A. NO.

14 Q. SO AT SOME POINT AT THE END OF JULY, DID YOU HAVE TO DO AN
15 ASSESSMENT BECAUSE SHE WAS A NEW EMPLOYEE?

16 A. YES, I DID A SECOND ASSESSMENT BEFORE I LEFT THE TEAM.

17 Q. YOU DID?

18 A. I WAS THINKING HARD, I CAN'T REMEMBER THE DATES, BUT
19 BEFORE I LEFT I DID.

20 Q. AND DID YOU MAKE A RECOMMENDATION THAT SHE NOT MOVE
21 FORWARD?

22 A. NO.

23 Q. I WOULD LIKE TO SHOW YOU A DOCUMENT WHICH WAS PREVIOUSLY
24 MARKED AS EXHIBIT 37.

25 MR. LAFAYETTE: IS THERE A BINDER FOR HIM? I THINK

1 IT WAS GIVEN EARLIER THIS WEEK.

2 **THE COURT:** IT IS ADMITTED, 37.

3 **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

4 (PAUSE IN THE PROCEEDINGS.)

5 (DISPLAYED ON SCREEN.)

6 **BY MR. LAFAYETTE:**

7 **Q.** THAT IS EXHIBIT 37. YOU'VE SEEN THIS BEFORE?

8 **A.** YES.

9 **Q.** ALL RIGHT. LET'S TALK ABOUT IT.

10 WHAT KIND OF A SYSTEM IS THIS? IS THIS A TEXT MESSAGING
11 SYSTEM?

12 **A.** YES. IT'S SIMILAR TO A TEXT MESSAGE BUT IT'S ON THE
13 COMPUTER, THE DESKTOP COMPUTER.

14 **Q.** OKAY. AND DO I READ IT FROM THE TOP DOWN OR THE BOTTOM
15 UP?

16 **A.** FROM THE TOP DOWN.

17 **Q.** OKAY. SO NOW THERE IS A STATEMENT HERE. FIRST, ERIC
18 PEREZ WRITES: WHY IS SHE ASKING ABOUT BILL?

19 WHO'S BILL?

20 **A.** ANOTHER OPERATOR, ANOTHER NEW HIRE OPERATOR.

21 **Q.** HAD YOU GIVEN BILL AND HER AN ASSESSMENT?

22 **A.** YES.

23 **Q.** DID BILL ASK ABOUT WHAT HER ASSESSMENT WAS?

24 **A.** NO.

25 **Q.** AND DID -- DO YOU KNOW NORMALLY TELL PEOPLE WHAT YOUR

1 ASSESSMENTS ARE ON OTHER PEOPLE?

2 **A.** NEVER.

3 **Q.** WHY NOT?

4 **A.** IT'S NOT RIGHT. WE DON'T DISCUSS THAT WITH PEOPLE'S
5 PEERS. IT'S BETWEEN THE SHIFT TEAM LEADER AND THE OPERATOR.

6 **Q.** SO YOU WRITE HERE AT 4:20 A.M.:

7 JUST GAVE CIARA HER MONTHLY REVIEW. SHE ASKED IF I GAVE
8 THE SAME COMMENTS TO BILL ON HIS REVIEW. I WROTE THEM BOTH AT
9 THE SAME TIME PAYING CLOSE ATTENTION TO BE EQUAL AND FAIR.

10 WHY DID YOU WRITE THAT?

11 **A.** BECAUSE OF STATEMENTS MADE PREVIOUSLY THAT SHE'S BEING
12 TREATED UNFAIRLY.

13 **Q.** OKAY. AND WAS BILL THE SAME QUALITY OF NEW PERSON THAT
14 SHE WAS?

15 WAS HE HAVING PERFORMANCE ISSUES?

16 **A.** NO.

17 **Q.** (READING)

18 I WROTE THEM BOTH AT THE SAME TIME PAYING CLOSE ATTENTION
19 TO BE FAIR -- AND THEN MR. PEREZ WRITES:

20 WHY IS SHE ASKING ABOUT BILL? I HAVE A FEELING I KNOW HOW
21 NEXT WEEK'S TALK WITH HER WILL GO. SHE'S GOING TO BE GOING
22 OFF SUBJECT AND SAYING WE ARE NOT TREATING HER FAIR.

23 UP UNTIL THIS POINT WITH REGARD TO FAIR, HAS SHE DISCUSSED
24 ANYTHING ABOUT THE UNFAIRNESS BEYOND THE TARDIES?

25 **A.** NO.

1 **Q.** (READING)

2 I WILL BE PREPARED FOR HER LOGIC. SHE DOESN'T NEED TO
3 KNOW WHAT WE TELL BILL.

4 AND THEN YOU WRITE SOMETHING BACK, DON'T YOU?

5 **A.** YES.

6 **Q.** WHY DON'T YOU READ WHAT YOU WROTE?

7 **A.** (READING)

8 I TOLD HER THAT I DON'T REMEMBER AND IT DOESN'T MATTER.
9 SHE'S PUSHING HARD ON THE EQUALITY THING.

10 **Q.** YOU HAVE A H-A-A-A-R-D ON THE HARD. TELL ME WHY YOU WROTE
11 THAT.

12 **A.** IT WAS MY WAY TO COMMUNICATE TO ERIC THAT THIS EQUALITY
13 THING IS COMING INTO QUESTION. I'M TRYING TO COMMUNICATE WITH
14 HIM THROUGH THIS THAT THAT'S HOW I FEEL.

15 **Q.** AT THIS POINT IN TIME, WHAT DID YOU UNDERSTAND THE
16 EQUALITY THING WAS?

17 **A.** SHE WASN'T BEING TREATED FAIRLY, BEING TARDY.

18 **MR. LAFAYETTE:** ALL RIGHT. I THINK IT'S 1:30, YOUR
19 HONOR.

20 **THE COURT:** ALL RIGHT.

21 **MR. LAFAYETTE:** WE WILL CALL HIM BACK ON MONDAY.

22 **THE COURT:** THAT'S A GOOD BREAKING POINT FOR YOU?

23 **MR. LAFAYETTE:** YES, YOUR HONOR.

24 **THE COURT:** ALL RIGHT, MR. CURRAN. DID I SAY IT
25 RIGHT THIS TIME?

1 **THE WITNESS:** CURRAN, CURRAN.

2 **THE COURT:** YOU MAY STEP DOWN.

3 ALL RIGHT. LADIES AND GENTLEMEN, WE ARE DONE FOR TODAY.

4 SO MY EXPECTATION IS THAT EVIDENCE WILL FINISH ON MONDAY, AND
5 THEN YOU WILL GET LUNCH, AND WE WILL HAVE INSTRUCTIONS AND
6 CLOSING ARGUMENTS. OKAY?

7 SO IT WILL BE A FULL DAY ON MONDAY. SO MAKE SURE YOU GET
8 SOME SLEEP. FEEL FREE TO BRING IN CAFFEINE. WE ARE GOING TO
9 WORK REAL HARD MONDAY BECAUSE I WANT TO GET IT TO YOU MONDAY
10 BY THE END OF THE DAY AND THEN YOU CAN COME IN ON TUESDAY AND
11 START DELIBERATING.

12 OKAY? ALL RIGHT. WE WILL SEE YOU ON MONDAY. REMEMBER
13 ALL MY DO NOTS, PLEASE. ENJOY YOUR WEEKEND.

14 (PROCEEDINGS HELD OUTSIDE THE PRESENTS OF THE JURY.)

15 **THE COURT:** OKAY. FEW THINGS TO DISCUSS.

16 YOU SHOULD KNOW THAT THE OBJECTION REGARDING THE LEGEND
17 TOOK SIX MINUTES, AND I'M DIVIDING THE TIME EQUALLY BETWEEN
18 BOTH SIDES. IN TERMS OF MAKING -- GETTING A LONG TIME TO GET
19 THAT DOCUMENT, I THINK IT'S FAIR BOTH OF YOU SHARE THAT TIME.
20 SO I HAVE ALLOCATED THAT EQUALLY TO BOTH OF YOU.

21 46 MINUTES LEFT FOR THE PLAINTIFF. THREE HOURS 23 MINUTES
22 LEFT FOR THE DEFENSE. PLUS, OBVIOUSLY, YOU HAVE YOUR HOUR FOR
23 CLOSINGS.

24 WHO ARE THE MEMBERS OF THE LLC OF EQUILON ENTERPRISES?

25 **MR. LAFAYETTE:** LET ME CHECK, YOUR HONOR. I DON'T

1 HAVE --

2 **THE COURT:** YOU KEEP ASKING ABOUT OFFICERS AND
3 DIRECTORS, AND OFFICERS AND DIRECTORS ARE RELATIVE TO A
4 CORPORATION. THIS IS NOT A CORPORATION. THIS IS A LLC, SO I
5 NEED TO KNOW WHO THE MEMBERS ARE AND WHAT THE RELEVANCE IS.

6 I HAVE TO MAKE SURE THAT I AM USING THE RIGHT PUNITIVES
7 INSTRUCTION, AND I THINK THAT I AM GOING TO HAVE TO SHIFT TO
8 ONE OF THE OTHER STANDARD INSTRUCTIONS. BUT IT'S NOT CLEAR TO
9 ME STILL WHO THE -- WHAT THE CORPORATE STRUCTURE LOOKS LIKE IN
10 THIS CASE.

11 ALL RIGHT. I'M STILL MISSING EXHIBIT 116A.

12 **MS. SMALLETS:** WE'LL GET THAT FOR YOUR HONOR.

13 **THE COURT:** WITH RESPECT TO THE METCALF PICTURE, I
14 DON'T SEE ANY REASON TO ADMIT IT. THEY SAW IT. IT'S NOT
15 REALLY RELEVANT, NOT VERY PROBATIVE, AND IT DOESN'T HAVE AN
16 EXHIBIT NUMBER, WASN'T ON THE EXHIBIT LIST, SO IT VIOLATES MY
17 ORDER. SO I'M NOT GOING TO ADMIT THAT.

18 596, THE TIMELINE. ARGUMENT ON THE TIMELINE. I DON'T
19 KNOW WHY WE NEED IT. YOU HAVE ALL THE DOCUMENTS THERE. I
20 KEPT EXPECTING TO SEE SOMETHING FROM A DEPOSITION TRANSCRIPT
21 ABOUT WHETHER OR NOT HE LACKED THE FOUNDATION.

22 **MS. SMALLETS:** HE TESTIFIED HE DIDN'T REVIEW IT, HE
23 DIDN'T CREATE IT, AND HE DIDN'T REVIEW IT.

24 **THE COURT:** HE DIDN'T TESTIFY TO THAT HERE.

25 **MS. SMALLETS:** RIGHT. IN HIS DEPOSITION HE DID. I'M

1 SORRY.

2 **THE COURT:** YOU DIDN'T CROSS HIM WITH THAT AND YOU
3 DIDN'T HAVE ANY OF THAT OFFERED AS EVIDENCE --

4 **MS. SMALLETS:** YES, YOUR HONOR.

5 **THE COURT:** -- IN THIS CASE. SO....

6 **MS. SMALLETS:** WELL, THE TESTIMONY THAT CAME IN HERE
7 WAS THAT CHRISTINE LAYNE CREATED IT. CHRISTINE LAYNE, IT'S
8 BEEN CLEAR FROM THE TESTIMONY TO DATE THAT SHE DID NOT HAVE
9 PERSONAL KNOWLEDGE OF THE INCIDENTS IN THE TIMELINE. AND IT'S
10 THE TIMELINE THAT SHE ENDS TO LORI MARTINELLI SAYING SHE'S
11 CREATED IT IN THE EXPECTATION OF LITIGATION.

12 SO, OUR VIEW THAT THIS IS NOT -- IT'S NOT A BUSINESS
13 RECORD THAT'S CREATED IN THE ORDINARY COURSE OF BUSINESS FOR
14 ORDINARY BUSINESS PURPOSES.

15 WHEN SHE SENDS IT TO LORI, SHE ADMITS WHAT THE PURPOSE IS;
16 THEY ARE CREATING THEIR LITIGATION DEFENSE. SO THAT'S OUR
17 CONCERN, YOUR HONOR.

18 IT'S CREATED BY CHRISTINE LAYNE, THAT WAS TESTIFIED TO
19 HERE, SHE WASN'T A PARTICIPANT IN HIS DOCUMENT. SO IT
20 CONTAINS HEARSAY WHICH WOULD NORMALLY BE ACCEPTABLE IN CERTAIN
21 CIRCUMSTANCES, BUT BECAUSE THE VERY DOCUMENT WHERE SHE SENDS
22 IT TO LORI SAYS THIS IS THE PURPOSE WE HAVE CREATED IT FOR, IT
23 BASICALLY PUTS THEIR CLOSING ARGUMENT IN THE JURY ROOM. AND
24 THAT'S OUR CONCERN. THEY KNEW WHEN THEY WERE CREATING IT,
25 THEY WERE CREATING A PIECE FOR USE IN LITIGATION.

1 **MR. LAFAYETTE:** I AM NOT -- IF IT'S MY TURN?

2 I AM NOT MAKING A WORK PRODUCT OR AN ATTORNEY-CLIENT
3 PRIVILEGE OBJECTION FOR THIS DOCUMENT. IT SEEMS THAT WHAT'S
4 HAPPENING IS PLAINTIFF IS TRYING TO SAY THAT SOMEHOW IF MY
5 CLIENT ISN'T MAKING THAT OBJECTION, THAT SOMEHOW SHE HAS
6 STANDING TO. AND THAT'S NOT THE WAY THE LAW WORKS. THE LAW
7 DOESN'T SAY --

8 **THE COURT:** SHE'S SAYING IT IS NOT A BUSINESS RECORD.

9 **MR. LAFAYETTE:** IT'S -- IT IS --

10 **THE COURT:** IT IS NOT A BUSINESS RECORD BECAUSE IT
11 WAS CREATED FOR LITIGATION PURPOSES. NOT FOR THE ORDINARY
12 COURSE OF ONE'S BUSINESS.

13 **MR. LAFAYETTE:** SHE DIDN'T GET THAT FROM CHRISTINE,
14 NUMBER ONE. NUMBER TWO, IT GOES TO STATE OF MIND. I
15 HAVEN'T -- SO --

16 **THE COURT:** SO ISN'T -- AREN'T -- FIRST OF ALL,
17 THERE'S A WHOLE BUNCH -- IT'S LIKE A THREE-PAGE DOCUMENT. AND
18 ALL IT IS IS A BUNCH OF ICONS ON THE PAGES WHICH REFLECT SOME
19 OTHER DOCUMENT WHICH IS NOT PART OF THE DOCUMENT.

20 SO FOR ONE, IT'S INCOMPLETE BECAUSE I DON'T KNOW WHAT
21 THOSE ICONS ARE. AND I JUST ADMITTED PROBABLY 40 EXHIBITS
22 TODAY, WHICH I THINK HAVE THEM ALL.

23 **MR. LAFAYETTE:** IN THE END, I THINK, YOUR HONOR,
24 YOU'RE SAYING, JUST BEING PRACTICAL ABOUT THIS, SHE HAS
25 TESTIFIED AS TO WHAT SHE LEARNED FROM REVIEWING ALL OF THAT.

1 SHE HAS TESTIFIED THAT SHE CAME UP WITH THE CONCLUSION THAT
2 SHE COULDN'T SUBSTANTIATE WHAT HAD HAPPENED.

3 THESE DOCUMENTS IN A CAPSULIZED WAY SHOW WHAT SHE RELIED
4 UPON TO GET THERE.

5 **THE COURT:** BUT YOU OFFERED THIS WITH PEREZ, NOT
6 LAYNE.

7 **MR. LAFAYETTE:** I OFFERED IT WITH PEREZ TO SHOW WHAT
8 HE SENT TO HER. AND THAT DOCUMENT, THE ONE THAT I JUST LOOKED
9 AT WITH HIM, IS THE ONE THAT HE SAID HE MADE MODIFICATIONS TO
10 AND SENT TO HER. THE ONE THAT I JUST INTRODUCED -- THAT I
11 JUST DID --

12 **THE COURT:** YOU CAN HAVE THE FIRST PAGE. THAT'S HIS
13 PORTION OF IT.

14 SO, 596A IS WHAT I WILL ADMIT WITH RESPECT TO PEREZ'S
15 CONTRIBUTION.

16 (DEFENDANT'S EXHIBIT 596A RECEIVED IN EVIDENCE)

17 89, THAT'S THE LAST ONE THAT'S OUTSTANDING.

18 ALL RIGHT. SO THIS IS THE TIMELINE WITHOUT THE LEGEND.
19 LOOK, I AM GOING TO ASSUME GOODWILL, THAT YOU ARE NOT
20 ATTEMPTING TO USE OR TO ENTRAP. IT WAS AN INCOMPLETE
21 DOCUMENT. AND YOU HAD THE LEGEND WHICH WAS ATTACHED TO THIS.

22 SO, I WILL ADMIT THE DOCUMENT WITH THE LEGEND THAT WE HAD
23 ON THE SCREEN, WHICH I THINK IS FAIR. WE WILL CALL IT 89A.

24 (PLAINTIFF'S EXHIBIT 89A RECEIVED IN EVIDENCE)

25 **MS. SMALLETS:** NO OBJECTION, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. SO GET ME THOSE DOCUMENTS.
2 DEFENSE GET ME 596A AND YOU GET ME 89A.

3 **MS. SMALLETS:** OKAY. YES, YOUR HONOR.
4 **THE COURT:** OKAY. LET ME SHOW YOU -- TELL YOU, I'M
5 GOING TO GO THROUGH THESE QUICKLY I ADMITTED A LOT OF EXHIBITS
6 TODAY.

7 **MR. LAFAYETTE:** CAN I SIT, YOUR HONOR?

8 **THE COURT:** YES. YOU BOTH CAN SIT.

9 THIS IS WHAT I ADMITTED, AT LEAST ACCORDING TO MY RECORDS:
10 65. 580 WAS REFERENCED BUT NOT ADMITTED. 593, 600, 601, 135,
11 103, 625, 106, 626, 503, 504, 505, 506, 507, 510, 513, 514,
12 520. 521 WAS REFERENCED BUT NOT ADMITTED. 526, 527, 529,
13 544, 545, 546, 551, 556, 557, 559, 560, 567, 569, 570, 574,
14 585, 586, 587, 588, 589, 590, 591. 596 WAS REFERENCED BUT NOT
15 ADMITTED. 68, 89A, 26. AND THEN BACK TO 596, I WILL DO 596A.

16 OKAY. IF YOU THINK THERE IS SOMETHING ELSE AFTER YOU
17 CHECK YOUR OWN RECORDS, MAKE SURE THAT YOU RAISE IT FIRST
18 THING ON MONDAY MORNING.

19 OKAY. I HAVE ONE OTHER QUICK THING TO PUT ON THE RECORD.
20 IS THERE ANYTHING ELSE YOU NEED TO PUT ON THE RECORD?

21 **MS. SMALLETS:** NO, YOUR HONOR.

22 **MR. LAFAYETTE:** NO, YOUR HONOR.

23 **THE COURT:** ALL RIGHT.

24 FOR PURPOSES OF THE RECORD, THE COURT WILL REFRAIN FROM
25 GRANTING THE RULE 50 MOTION AS INDICATED EARLIER BASED ON THE

1 FOLLOWING AUTHORITY, *MCPHILLAMY VERSUS BROWN & ROOT, INC.*

2 IT'S A FIFTH CIRCUIT CASE 1967, 810 F.2D 529 AND 533, *THERRELL*
3 *VERSUS GEORGIA MARBLE HOLDINGS COMPANY*, ELEVENTH CIRCUIT CASE
4 992 -- OR 1992, CITE 960 F.2D 1555.

5 BOTH CASES STAND FOR THE GENERAL PROPOSITION THAT IT IS
6 MORE DESIRABLE TO TAKE A VERDICT AND PASS ON THE SUFFICIENCY
7 OF THE EVIDENCE POST VERDICT.

8 WITH RESPECT TO THE ISSUE ON PUNITIVES, WE HAVE MORE
9 WITNESSES COMING IN ON MONDAY, AND WE HAVE TIME TO DISCUSS
10 THAT TOPIC AFTER THE JURY GETS THE VERDICT -- GETS THE CASE ON
11 LIABILITY PURPOSES, FOR LIABILITY PURPOSES.

12 I DO THINK THAT NOT EVERYONE WHO WORKS FOR THE CORPORATION
13 CAN BIND THE CORPORATION. AT THIS JUNCTURE I WOULD SAY
14 CHRISTINE LAYNE CANNOT BIND THE LLC AND IT CANNOT, I DON'T
15 THINK ON THE EVIDENCE PRESENTED, BE FOUND A MANAGING AGENT.
16 AS AN EXAMPLE, SHE'S TOO LOW LEVEL.

17 MIKE BECK, HE SEEMS TO CONTROL AN ENTIRE DEPARTMENT. I
18 DON'T KNOW WHAT KIND OF POLICIES HE CONTROLS. SO TO THE
19 EXTENT THAT YOU THINK YOU HAVE SOMETHING, YOU BETTER START
20 LOOKING FOR AUTHORITY BECAUSE NOT EVERY EMPLOYEE AND NOT EVERY
21 SUPERVISOR CAN BIND A COMPANY; NOT FOR PUNITIVE DAMAGES
22 PURPOSES.

23 IF YOU HAVE FORGOTTEN, AS I SAID BEFORE, I'VE ALREADY
24 GRANTED SUMMARY JUDGMENT AS TO SOME OF THESE INDIVIDUALS.
25 THEY ARE NOT CURRENTLY ON THE LIST, BUT I AM LOOKING AT WHO,

1 IF ANYBODY, I WILL ALLOW TO GO TO THE JURY ON THIS TOPIC. IF
2 IT'S AT ALL QUESTIONABLE, I WILL ALLOW IT TO GO AND I'LL DEAL
3 WITH IT POST-TRIAL BECAUSE IT'S BETTER TO HAVE A VERDICT AFTER
4 ALL OF THIS THAN NOT.

5 BUT I WOULD SAY THE OTHER QUESTION IS, WITH RESPECT TO THE
6 INDIVIDUALS WHO HAVE NOT TESTIFIED HERE, THE QUESTION IS, WHAT
7 WAS COMMUNICATED TO THEM? WHAT DID THEY KNOW? IF ALL THEY
8 KNEW WAS ALL OF THE PERFORMANCE ISSUES AND THEY HAD ZERO
9 INFORMATION COMMUNICATED TO THEM ABOUT THE ALLEGED
10 DISCRIMINATORY CONDUCT, I DON'T KNOW HOW IT IS THAT THEY CAN
11 BE SAID TO HAVE RATIFIED SOMETHING OF WHICH THEY HAD ZERO
12 KNOWLEDGE.

13 SO YOU ARE GOING TO HAVE TO ANSWER THAT QUESTION FOR ME.

14 **MS. SMALLETS:** YES, YOUR HONOR.

15 **THE COURT:** ALL RIGHT? THOSE ARE THE THINGS TO THINK
16 ABOUT OVER THE WEEKEND. ANYTHING ELSE?

17 **MR. LAFAYETTE:** NO, YOUR HONOR.

18 **MS. SMALLETS:** NO, YOUR HONOR.

19 **THE COURT:** TRY TO GET A LITTLE BIT OF SLEEP. MONDAY
20 IS A BIG DAY. WE'LL SEE YOU THEN.

21 **MR. LAFAYETTE:** THANK YOU. ENJOY THE BALLET.

22 **THE COURT:** YOU KNOW, WE'VE GONE EVERY YEAR SINCE SHE
23 WAS FIVE, SO WE'LL TRY. THANK YOU.

24 (PROCEEDINGS CONCLUDED AT 1:46 P.M.)

25

1

2

3 **CERTIFICATE OF REPORTER**

4

5

6

7

I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

8

9 

10 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

11 SATURDAY, DECEMBER 15, 2018

12

13

14

15

16

17

18

19

20

21

22

23

24

25